

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FIRSTENERGY FAMILY CREDIT
UNION,

Plaintiff,

vs.

FIRSTENERGY FEDERAL CREDIT
UNION, FORMERLY KNOWN AS
ALLEGHENY ENERGY FEDERAL
CREDIT UNION,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

SHOW CAUSE HEARING

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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1 APPEARANCES (CONTINUED):

2 For FirstEnergy Corporation:

3 John M. Skeriotis, Esq.
4 Heather M. Barnes, Esq.
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8 (330) 535-5711

9 and

10 David S. Winston, Esq.
11 FirstEnergy
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15 Also Present:

16 Timothy Baker, Kevin Daum, Diane
17 L. Momeyer, John McIlvaine, Esq.,
18 Yvonne Phillips, Michael Phillips,
19 Brenda Trout, Brenda Dils, David
20 Friend, Kathleen Sutyak, Cynthia
21 Menhorn, Daniel Dunlap

22 Court Reporter:

23 Mary L. Uphold, RDR, CRR
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25 and United States Courthouse
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26 Proceedings recorded by mechanical stenography; transcript
27 produced by computer-aided transcription.

1 P R O C E E D I N G S

2 - - -

3 LAW CLERK: The matter before the court is Case
4 Number 5:12-cv-0864, FirstEnergy Family Credit Union,
15:17:56 5 Incorporated versus FirstEnergy Federal Credit Union,
6 Incorporated.

7 THE COURT: Good afternoon, everyone. You may
8 retake your seats.

9 Counsel for FirstEnergy Family Credit Union,
15:18:06 10 Incorporated, will you please introduce yourself for the
11 record and those accompanying you today?

12 MR. MOVIUS: Thank you, Your Honor. My name is
13 David Movius, and with me is Matt Cavanagh, my co-counsel,
14 and Mr. Timothy Baker and Kevin Daum, both of FirstEnergy
15:18:23 15 Family Credit Union.

16 THE COURT: Welcome to you all.

17 ALL: Thank you, Judge.

18 THE COURT: Will counsel for FirstEnergy Federal
19 Credit Union please introduce yourself for the record and
15:18:32 20 those accompanying you here today, sir?

21 MR. PRITCHARD: J. Matthew Pritchard for
22 FirstEnergy Federal. Today with me I have co-counsel,
23 Cecilia Dickson, and Diane Momeyer, who is the President of
24 FirstEnergy Federal.

15:18:48 25 Additionally, I have my partner, John McIlvaine,

1 with me.

2 THE COURT: Your partner --

3 MR. McILVAINE: (Indicating.)

4 THE COURT: Thank you, sir. You may continue. I

15:18:58 5 just would like to associate the names with the faces.

6 MR. PRITCHARD: Certainly. And a full complement
7 of the Board of Directors of FirstEnergy Family as ordered.
8 Federal, I'm sorry.

9 THE COURT: You may, sir.

15:19:20 10 MR. PRITCHARD: A full complement of the
11 FirstEnergy Federal board, the names of whom we have
12 supplied to your clerk, Your Honor.

13 THE COURT: Thank you. And I do have those names
14 here. I have a Yvonne Phillips; welcome. Michael Phillips;
15:19:34 15 welcome, sir. Brenda Trout; welcome. Brenda Dils. Did I
16 pronounce that correctly?

17 MS. DILS: Yes.

18 THE COURT: Welcome. David Friend; welcome.
19 Kathleen Sutyak; welcome. Did I pronounce that correctly?

15:19:51 20 MS. SUTYAK: Yes.

21 THE COURT: Welcome. Is it "Cynthia" or "Cythia"?

22 MS. MENHORN: "Cynthia."

23 THE COURT: Menhorn?

24 MS. MENHORN: Yes.

15:20:01 25 THE COURT: Welcome.

1 MS. MENHORN: Thank you.

2 THE COURT: And Daniel Dunlap. Welcome to you
3 all.

4 You are finished then, Mr. Pritchard?

15:20:08 5 MR. PRITCHARD: I am. Thank you.

6 THE COURT: Thank you. You may retake your seat,
7 sir.

8 This hearing has been scheduled to allow the court
9 to address plaintiff's motion to show cause filed on the
15:20:16 10 docket and numbered ECF 41, to show cause why Defendant
11 FirstEnergy Federal Credit Union should not be held in
12 contempt.

13 The purpose of the hearing is to allow the parties
14 to present evidence that will inform the court of whether it
15:20:32 15 has been established by clear and convincing evidence that
16 Defendant FirstEnergy Federal Credit Union, Diane Momeyer,
17 its President and CEO of defendant, and the members of the
18 Board of Directors, along with the attorney, Mr. Pritchard,
19 have resisted or disobeyed the court's preliminary
15:20:54 20 injunction order issued on November 7, 2012, which is also
21 docketed as ECF 39.

22 It's important that all of you understand, that
23 being all of those persons who are potential contemnors,
24 understand that this is a civil contempt hearing. The
15:21:15 25 standard is clear and convincing evidence. The penalty, if

1 I find that there is contempt of my order, may include
2 imprisonment, a prospective fine, which will accrue until
3 the contemnor complies with my order, that being the
4 preliminary injunction, and under exceptional circumstances,
15:21:32 5 a reimbursement of attorneys' fees and costs incurred in
6 bringing the contempt proceeding.

7 I am pleased to see, based upon my sign-in chart,
8 that Ms. Heather Barnes is here as well.

9 MS. BARNES: Yes, Your Honor.

15:21:47 10 THE COURT: Thank you. And with you, and you can
11 tell me if I'm correct, David Winston?

12 MS. BARNES: Yes, Your Honor.

13 THE COURT: Welcome to you both. And Skeriotis,
14 Mr. John Skeriotis?

15:22:01 15 MR. SKERIOTIS: Yes, Your Honor.

16 THE COURT: Welcome to all of you.

17 Ms. Barnes, I appreciate you being here, and I
18 know that you were subpoenaed and you are under court order
19 to be here, and I want you to know that while I did not
15:22:11 20 require you appear today as a potential contemnor, I do want
21 you to pay attention, because I will be listening to the
22 evidence with an eye towards determining whether you have
23 been in concert or participation with those whom I'm going
24 to adjudge today have been or have not been in contempt of
15:22:30 25 my order.

1 Can I make that any more clear?

2 MS. BARNES: I understand, Your Honor.

3 THE COURT: Thank you. Thank you all for
4 standing. You may retake your seats.

15:22:37 5 Counsel, how would you like to proceed? I made
6 sure that you received notice today, because I became
7 concerned when I received the motion to excuse the members
8 of the board. And I'm sure that you're very busy persons,
9 but because I do intend to take evidence, I wanted there to
15:22:52 10 be live witness testimony. I will not accept a statement
11 such as, "I intend to rely on the motion to have a show
12 cause hearing," or the brief in opposition to that.

13 Mr. Movius, your preference regarding proceeding
14 with the presentation of evidence?

15:23:13 15 MR. MOVIUS: Your Honor, it's my understanding
16 that as the moving party, the burden was on FirstEnergy
17 Family to demonstrate by clear and convincing evidence that
18 there was a controlling court order and that that order had
19 not been complied with, and that's what then led to the
15:23:34 20 calling of this hearing; and at that point, the burden of
21 proof actually shifts then to the accused contemnor to show
22 through evidence that they have, in fact, complied with the
23 terms of the order.

24 We're prepared to proceed in whatever fashion the
15:23:54 25 court would prefer, but it would be my understanding then

1 that as it's a show cause hearing, that it would be the
2 defendants in this case that would proceed first.

3 But should the court want us to proceed first,
4 we're prepared to do so.

15:24:07 5 THE COURT: I appreciate that. I think your
6 explanation is fair and reasonable.

7 Mr. Pritchard, are you prepared to start?

8 MR. PRITCHARD: I am, Your Honor. Excuse me.

9 Thank you for your time today, Your Honor.

15:24:32 10 First I'd like to begin by saying that we have
11 taken steps to comply with the court order, including as
12 late as this afternoon, pursuing settlement with the
13 plaintiff fully and completely, and including discussions
14 and negotiations with our insurance carrier, as well as the
15:24:56 15 plaintiff had made financial demands upon us.

16 Additionally, we have taken steps to address how
17 we might be able to change our name to be in compliance with
18 the court order, and indications from opposing counsel as to
19 how we might be able to resolve this matter.

15:25:20 20 And additionally, Your Honor, and a point with
21 which I know you may disagree, we think that the letter that
22 we received from Ms. Barnes constituted a change in material
23 circumstances with respect to the ownership of marks
24 including "FirstEnergy," particularly in light of your order
15:25:46 25 on the preliminary injunction.

1 I'd like to --

2 THE COURT: Let me interject just so that you do
3 what I know is your intention, and that is to best serve
4 your client today.

15:26:00 5 That letter has no effect on the underlying legal
6 issues that have brought all of these people to this
7 courtroom today.

8 The issue is not the "FirstEnergy" mark, the issue
9 is FirstEnergy Family Credit Union's name in its entirety,
15:26:19 10 and the proprietary interest that that entity has and the
11 use of that name and objecting to, based upon the law, the
12 confusingly similar name adopted by your client.

13 "FirstEnergy" as the first component is not nor
14 has it ever been the problem. What you did with perhaps
15:26:42 15 Ms. Barnes in concert with you was to punctuate your
16 disobedience of my preliminary injunction.

17 Simply, all you have to do is to comply by
18 figuring out a way to distinguish FirstEnergy Federal Credit
19 Union from FirstEnergy Family. By solidifying or believing
15:27:05 20 that you have solidified by establishing a written license
21 agreement with FirstEnergy did nothing at all except to
22 either create the impression that you truly don't understand
23 the main issue, or you have absolutely no respect for the
24 United States District Court. Neither are attractive
15:27:26 25 results.

1 MR. PRITCHARD: Yes, Your Honor.

2 THE COURT: What I'd like to know is what you've
3 done.

4 You tell me that the National Credit Union
15:27:35 5 Administration requires that "Federal Credit Union" be a
6 part of your name. It is today. You'd like to continue
7 using "FirstEnergy." I have no problem with that.

8 What I think you need to do is decide what's going
9 to separate "Federal Credit Union" from "FirstEnergy." What
15:27:48 10 have you done relative to the National Credit Union
11 Administration? Have you been in contact with that entity?

12 It's my understanding from the manual that was
13 presented and relied upon by both you and Mr. Movius at the
14 preliminary injunction hearing that there are two -- in
15:28:06 15 addition to "Federal Credit Union" being in the name of
16 every credit union chartered by that organization, that you
17 were to, prior to adopting a name, ensure that the proposed
18 federal credit union name does not constitute an
19 infringement.

15:28:24 20 I don't know if that was done. My suspicion is it
21 was not. But there certainly should have been some
22 communication with this National Credit Union Administration
23 before today.

24 MR. PRITCHARD: Uh-huh.

15:28:38 25 THE COURT: It should have happened, ideally, in

1 advance of November 7, but certainly soon after November
2 7th, nearly three weeks ago, if it is indeed this entity
3 that you are required to report to before using a name other
4 than the official name.

15:28:56 5 So what have you done --

6 MR. PRITCHARD: And again, Your Honor, I think
7 that the issue is that we -- it's our view that we're under
8 a legal obligation to use our legal name in transactions
9 with all of our members and depositors. So it's more than
15:29:12 10 just adding a name or adding a word.

11 And, quite frankly, our most recent settlement
12 position includes complying with that portion of the order.

13 We have evaluated over ten possibilities, some of
14 which, and again, if I may, Your Honor, create some
15:29:36 15 difficulties, because there may be other unrelated
16 third-party rights that we may run afoul of. So if we were
17 to choose FirstEnergy City, for example, Citibank may have
18 some real objections to that.

19 And so a number of the alternatives that have been
15:29:59 20 proposed by the board and have been worked on diligently by
21 Ms. Momeyer, including a review of all of the credit union
22 names that are registered with the NCUA, together with my
23 evaluation of the availability of those names, have
24 occurred.

15:30:18 25 And I would be happy to go through seriatim since

1 the 7th everything that we have done up to this point to
2 comply with that order.

3 But I would note that the day that the order
4 issued, we did ask for a motion to stay to give us an
15:30:42 5 opportunity to comply with that.

6 And again, we don't want to further confuse even
7 our own members by making a change, having that refused by
8 the NCUA, and then making another change.

9 So we have been -- and, in fact, in discussions
15:31:01 10 the day after the order issued, Mr. Movius had made
11 representations that using "FirstEnergy" to start would
12 continue to be okay with them, made financial demands upon
13 us, and indicated that no immediate action would be taken to
14 attempt to enforce the order of the 7th.

15:31:25 15 And so it's our position that, you know, we need
16 to hold ourselves out that way. We have -- beyond signage
17 and paraphernalia, there would need to be computer vendors,
18 they would need to update software to print loan agreements
19 and a whole variety of situations that makes complying with
15:31:49 20 your order extremely difficult, Your Honor.

21 THE COURT: Have you been in contact with the
22 National Credit Union Administration?

23 MR. PRITCHARD: I have not. I have relied on our
24 previous name change and the experience that Ms. Momeyer had
15:32:01 25 and the board had in going through that process as a basis

1 for proceeding.

2 THE COURT: Was what is today FirstEnergy Federal
3 Credit Union in contact with the National Credit Union
4 Administration prior to, when making the name change that
15:32:19 5 you use today?

6 MR. PRITCHARD: That's correct, Your Honor. We
7 had filed that whole name change, and that was only perhaps
8 the better part of a year ago.

9 THE COURT: I want to --

15:32:33 10 MR. PRITCHARD: It's a new experience -- excuse
11 me. It's a recent experience to the client.

12 THE COURT: What is it that you intend to do to
13 establish by clear and convincing evidence that you're not
14 in contempt of my order? I had my law clerk write to you.
15:32:49 15 I am certainly willing to listen to any statement that you
16 would like to make, which I envision is what you've embarked
17 upon.

18 MR. PRITCHARD: Uh-huh.

19 THE COURT: You can complete it. But I certainly
15:32:59 20 want evidence. I intend for you to call a witness that I'll
21 swear in, and I'll give you some indication of the kinds of
22 things that would be helpful: Who knew what? In your
23 revised declaration that was filed today indicating -- and
24 it indicates at paragraphs -- well, the declaration that
15:33:19 25 explains that there was an error made in the earlier

1 declaration.

2 At paragraphs 6 and 7, you state, "Defendant's
3 counsel promptly informed defendant" -- this is regarding
4 the letter from Ms. Barnes -- "of the communication and
15:33:32 5 defendant determined it would sign the license agreement and
6 it executed the license agreement."

7 I want to know with whom -- whose decision it was
8 to sign the license agreement, and of those board members
9 present, who apart from Ms. Momeyer knew this.

15:33:47 10 You see, the decision I will be making at the
11 conclusion of this hearing is that if there are parties in
12 contempt, I want to be able to list each of those parties
13 and determine whether or not the fee -- not the fees, but
14 the fine that I impose, which will remain in place and
15:34:05 15 accrue by day until you're in compliance, will be joint and
16 severally with X. I am going to want to put in names.

17 And while all of the board members are here, along
18 with you and Ms. Momeyer, I don't want to put in names if
19 these people were not informed. This paragraph 6 encourages
15:34:24 20 me that they were.

21 I'd like to hear what you can prove to me through
22 your witnesses about that. And I don't know that it's
23 necessary to call each board of director. It may be
24 sufficient to call Ms. Momeyer. But it is not sufficient
15:34:40 25 for you to proffer that information to me.

1 You state at paragraph 7, "Recognizing that this
2 factual circumstance has implications for this litigation
3 regardless of what plaintiff elects to do in response to
4 this letter, defendant attempted to reach plaintiff's
15:34:58 5 counsel to discuss the correspondence on November 16."

6 I will allow you to do what you'd like with that
7 paragraph. My interest is in, primarily, paragraph 6.

8 MR. PRITCHARD: And if I may, Your Honor, that's
9 my revised declaration from today?

15:35:16 10 THE COURT: It is, sir, 58-1. It's attached to
11 ECF filing 58.

12 MR. PRITCHARD: I'm sorry, I don't have a copy of
13 that with me.

14 THE COURT: Do you, Ralph?

15:35:38 15 LAW CLERK: I can print one off. I'll be right
16 back.

17 MR. PRITCHARD: Can you tell me what it says?

18 THE COURT: Well, I just did. That's just an
19 example.

15:35:47 20 I think what the point I've made, I don't know how
21 I can make it much more clear, there has not been
22 compliance. Based upon what you've spread on the record so
23 far today, you're not even close to complying.

24 MR. PRITCHARD: Uh-huh.

15:36:00 25 THE COURT: You haven't contacted the organization

1 that you must satisfy to change your name. You've written
2 that as recently as November 21st in your opposition to the
3 motion to show cause. You've again in this document, and
4 you've done it several times before, indicated your
15:36:24 5 affiliation with the National Credit Union Administration
6 and your need to satisfy that entity, yet you stand before
7 me today telling me that you haven't contacted that entity.
8 And the order has been issued since November 7th.

9 You tell me that you're considering names, but you
15:36:40 10 haven't shared those names with that entity. You're
11 concerned about stationery and other matters, but to my
12 knowledge, you've done absolutely nothing.

13 And I'm surprised that that's the case. It makes
14 me very concerned that you're not at all aware of how very
15:36:59 15 serious this matter is. Not only for yourself, as the
16 attorney representing the defendant, but also for your
17 clients.

18 And what I want to know is whom will be held
19 responsible, whom I will name as a contemnor, who will be
15:37:16 20 responsible for the dollar amount that I'm likely to impose
21 if I remain convinced, as I am now, that by the conclusion
22 of this hearing, there's going to be clear and convincing
23 evidence that you're in contempt of my order.

24 Does that help you?

15:37:34 25 MR. PRITCHARD: It does, Your Honor. If it would

1 please the court, I would be happy to catalog every step
2 that we've taken since the issuance of the order in an
3 attempt to comply with that.

4 THE COURT: When you say "we," who has assisted
15:37:49 5 you in taking those steps?

6 MR. PRITCHARD: Ms. Dickson and Diane Momeyer and
7 the --

8 THE COURT: Call Ms. Momeyer as your witness and
9 ask her questions about what steps have been taken.

15:37:59 10 MR. PRITCHARD: Yes, ma'am. If you would just
11 give me a moment, please, Your Honor.

12 (Pause.)

13 MS. DICKSON: Your Honor, if it pleases the court,
14 may I present Ms. Momeyer's testimony to you?

15:38:35 15 THE COURT: You may, Ms. Dickson.

16 MS. DICKSON: At this time, we call Diane Momeyer.

17 THE COURT: Please approach to be sworn.

18 LAW CLERK: Raise your right hand.

19 DIANE LYNN MOMEYER, of lawful age, a witness
20 called by the Defendant, being first duly sworn, was
21 examined and testified as follows:

22 LAW CLERK: Please take a seat at the witness
23 stand.

24 THE COURT: Ms. Momeyer, have you ever testified
15:39:05 25 in a hearing before?

1 THE WITNESS: No, I have not.

2 THE COURT: I am sure you have some idea, through
3 no other resource than television, Ms. Dickson will put
4 questions to you. When she's finished questioning you, I
15:39:15 5 will give Mr. Movius an opportunity to cross-examine you.
6 If the court would like to better explore an area that's
7 either been questioned or not, I will ask you a question.

8 In all cases, please remember that you are under
9 oath and are expected to give nothing other than the
15:39:30 10 absolute unvarnished truth to any question put to you. If
11 you're unable to answer the question, you can ask that it be
12 explained.

13 Although the rules of evidence are suspended, I
14 will entertain objections, but I will ask you to be cautious
15:39:43 15 in doing that, because my goal here is to explore what has
16 been done when and by whom.

17 With that background, Ms. Dickson, are you
18 prepared?

19 MS. DICKSON: I am, Your Honor.

15:39:54 20 THE COURT: You may then.

21 DIRECT EXAMINATION OF DIANE LYNN MOMEYER

22 BY MS. DICKSON:

23 Q. Good afternoon, Ms. Momeyer. Would you please state
24 your full name for the record?

15:39:59 25 A. Diane Lynn Momeyer.

1 Q. And would you tell us your position, please, with
2 FirstEnergy Federal Credit Union?

3 A. I am the President and CEO.

4 Q. Ms. Momeyer, are you aware of the court's November 7th,
15:40:12 5 2012 order that is the subject of this hearing today?

6 A. I am.

7 Q. And can you tell us how you became aware of the court's
8 November 7th order?

9 A. Through your law firm.

15:40:24 10 Q. Okay. Would that be through contact with either
11 Mr. Pritchard or myself?

12 A. Yes.

13 Q. Do you have a recollection as to when you became aware
14 of that order?

15:40:32 15 A. I would probably say it was that day.

16 Q. Do you remember whether or not it was a telephone
17 conversation or in person?

18 A. It was not in person.

19 Q. Okay.

15:40:45 20 A. It would have probably been a phone call, I assume.

21 Q. Did you receive a copy of that order?

22 A. Yes, we received a copy.

23 Q. Upon receiving notification of the court's order,
24 generally speaking, what actions did you take?

15:41:00 25 A. We had been going through every step possible in our

1 mind through the credit union and through the board as to
2 how we would need to proceed with anything and everything.
3 We didn't want to leave any stone unturned.

4 So at that point, we had said that we needed to still
15:41:22 5 work towards settlement, if possible, with Family, and that,
6 if I recall correctly, we were going to make them an offer,
7 monetary offer after speaking with CUNA, our insurance
8 agency, and also offered to insert a word in between the
9 "FirstEnergy" and the "Federal Credit Union."

15:41:46 10 And we were ready to do that because of the order that
11 we had received.

12 Q. Okay. I want to break down each of those items that
13 you just discussed.

14 When you received the order, what actions did you take
15:41:59 15 to notify other members of the FirstEnergy Federal Credit
16 Union employees or the board? What did you do physically
17 sort of with the order and the knowledge that you had?

18 A. I shared it with the Board of Directors.

19 Q. You indicated as --

15:42:18 20 THE COURT: Before you go on, will you please tell
21 me how you shared it with the Board of Directors? Did you
22 call a meeting, send an e-mail? What did you do?

23 THE WITNESS: I'd have to look specifically. We
24 have done conversations. We've had multiple phone
15:42:32 25 conversations with the board, and also e-mails.

1 But whenever it was something strong and
2 definitive, we would have phone calls, phone conversations.

3 THE COURT: And if you'll indulge me one more
4 time, Ms. Dickson.

15:42:45 5 Do you believe that you shared a copy of my order
6 with the Board of Directors? Did you provide a copy,
7 electronic or hard copy?

8 THE WITNESS: I believe they probably had received
9 it. It might have been from The Webb Law Firm and not from
15:43:02 10 me. I didn't typically forward things from them, they would
11 send it.

12 THE COURT: Thank you, Ms. Dickson.

13 BY MS. DICKSON:

14 Q. You've outlined a couple of steps, Diane. I want to
15:43:15 15 address them, but I want to take them out of order, if I
16 may.

17 One of the items you talked about was preparing to
18 change your name. What steps did that involve in terms of
19 consideration of a name change, from your perspective?

15:43:31 20 A. The first time we changed the name, I can use that
21 knowledge to say what it would be for this time; is that
22 what you're asking?

23 Q. What I'm asking is, when you're aware of the court
24 order and you indicated that there had been some discussion
15:43:42 25 about changing your name, what nature -- what were those

1 discussions?

2 **A.** The board, we went through numerous names and talked
3 about which choices we would like to use the best. I was
4 doing research through the NCUA's website to see if there
15:43:59 5 were other credit unions that had those names, those words
6 in their name, because we're very, you know, leery of
7 choosing something that could cause a potential problem down
8 the road.

9 And also, we were looking on the federal trade
15:44:14 10 government's website, trademark website to see if there were
11 any words that would be a potential problem.

12 So we were taking the initial steps.

13 Once we would then decide upon a new name, then we
14 would go to the NCUA with that specific name and then ask
15:44:36 15 them. They don't want us to submit multiple choices. They
16 want us to -- that's what we did the last time, was to
17 determine what name we wanted to suggest, and then they
18 would go ahead and take their review of that.

19 **Q.** And is it your understanding then that the NCUA will
15:44:57 20 approve an application with a specified name as opposed to
21 issuing an advisory opinion as to which names may be
22 preferable?

23 **A.** In order to -- yeah. In order to receive that name and
24 to give us the certificate, which is what they will use and
15:45:13 25 we would use to give all of our vendors, they would want us

1 to say the specific name.

2 Q. The court made reference to a manual that guides the
3 NCUA practice. Are you familiar with this manual that the
4 judge made reference to?

15:45:29 5 A. I am familiar with it a little bit.

6 Q. Okay. And one of the provisions, I'm not quoting it
7 here, but relates to investigating a name to ensure that it
8 does not infringe on another mark.

9 Are you familiar with that section that I'm talking
10 about?

11 A. That wording, yes.

12 Q. I want to talk first about the selection of your name,
13 FirstEnergy Federal Credit Union. Were you aware of that
14 provision at the time that you selected that name?

15:45:54 15 A. Yes, I was aware of that.

16 Q. And what did you do to comply with that provision when
17 you selected the name -- when you, FirstEnergy Federal,
18 selected the name FirstEnergy Federal?

19 A. The first step that we did was we went to -- I sent an
15:46:10 20 e-mail to FirstEnergy Corp to ask them if they would approve
21 of our credit union name being changed to FirstEnergy
22 Federal Credit Union, and I specifically said, "We are aware
23 of the existence of FirstEnergy Family Credit Union."

24 And we thought that was -- the board, we all thought
15:46:29 25 that was our first necessary step, because we felt that they

1 were the owners of that mark, so we went to them first.

2 They replied in an e-mail that they didn't have a
3 problem with it.

4 So we then went to NCUA and asked for that name to be
15:46:45 5 the official name change, and we received the certificate to
6 change the name for that.

7 So those were the steps that we had taken.

8 **Q.** And when you say you asked the NCUA, that was through a
9 formal application?

15:46:59 10 **A.** A formal letter from our -- yes, a formal letter.

11 **Q.** I want to fast forward now to the consideration after
12 this court's order when you're thinking about a name change.

13 You're still aware of that section of the credit union
14 manual that requires that you do some investigation to avoid
15:47:15 15 infringement, correct?

16 **A.** Right.

17 **Q.** So at that point, what steps do you take to think about
18 picking a new name?

19 **A.** Well, that's what we've been doing, is looking on that
15:47:26 20 NCUA.gov site to see if there are any credit unions that
21 have the name in it. Even though we see multiple credit
22 unions with the same exact name, we're still leery of
23 picking anything that could be similar to another credit
24 union.

15:47:40 25 And then also, we've been looking on the trademark

1 website to see how many hits there are in the class 036 for
2 the financial.

3 And I also know that Matt Pritchard has been assisting
4 us with that, too, on some of our names that we have put out
15:47:58 5 there for potential name change, to see if we thought any of
6 them could be problematic so that we don't have an issue
7 again.

8 **Q.** When you say you're looking at the website, especially
9 the NCUA website, can you explain to me what it is you're
15:48:13 10 looking for or how you are looking at the website or
11 searching the website?

12 **A.** Yeah. There's a search option on the NCUA website
13 where you can type in just even letters or a word and hit
14 the find button to see how many -- what specific names of
15:48:29 15 credit unions exist out there already. They'll have the
16 credit union name and the state.

17 **Q.** What search terms were you using as you investigated
18 the NCUA website? And just sort of generally, how did you
19 come up with your search terms?

15:48:45 20 **A.** Words that we thought would fit nicely and make sense
21 in our FirstEnergy something Federal Credit Union. We've
22 thrown "Choice" out there, we've thrown "Premier" out there
23 and "Prime." Those were probably the top three choices of
24 our board.

15:49:02 25 **Q.** And I was just going to say, when you say that "we"

1 thought, how did you develop this list of potential options?

2 **A.** Input -- you know, we would do some research -- I would
3 do some research, our operations manager did some research,
4 some of our board members had suggested names that we could
15:49:18 5 use.

6 **Q.** Approximately how many names since November 7th have
7 been searched on the NCUA website?

8 **A.** Probably 20.

9 **Q.** Okay. And how many names have been searched on the
15:49:30 10 trademark website?

11 **A.** That takes a little bit longer. I've probably done ten
12 on my own.

13 **Q.** You personally?

14 **A.** Right, on my own.

15:49:41 15 **Q.** How long did it take you to do the investigation on the
16 NCUA website?

17 **A.** It may only take a few minutes per name.

18 **Q.** Okay. When you get the search results for the name,
19 what does it look like? Can you explain it to us? You type
15:49:59 20 in "Choice," I think was the example you used. What is the
21 result that you will receive?

22 **A.** It will show us the credit union name and their state.

23 **Q.** For the 10 to 20 searches that you conducted, what
24 volume of information did you receive in return? By that I
15:50:19 25 mean, did you get -- you searched "Choice," for example.

1 **A.** Some words had less. Like the word "Advantage," we
2 checked that one. That had 21, I believe, credit unions
3 that had the word "Advantage" in its name. Some other words
4 like "Vision" didn't have any. There was a "Visions," with
15:50:40 5 it plural, but there wasn't any that had just the word
6 "Vision."

7 **Q.** Did some of those searches have more than 20 results?

8 **A.** Yes.

9 **Q.** Can you give me an estimate of what the maximum results
15:50:51 10 were that you got for some of the possible terms, a
11 ballpark?

12 **A.** Forty.

13 **Q.** Okay.

14 **A.** There were some that had a lot. The word "First" has a
15:51:04 15 lot.

16 **Q.** And once you received these results, which I understand
17 the search only took a few minutes to generate, what did you
18 do then with these results?

19 **A.** That's where we've been sending e-mails back and forth
15:51:15 20 with the board to try to determine what word would be best
21 to fit in with FirstEnergy Federal Credit Union.

22 **Q.** And what types of considerations go into determining,
23 now that you have this NCUA information, which of these
24 potential options might be the best option?

15:51:29 25 **A.** Well, that's where we wanted to go -- that's where we

1 would go to the trademark site, too, to see how many hits
2 potentially there were; and Matt Pritchard had also taken a
3 few of those a step further to help us to determine what
4 word would best fit.

15:51:48 5 **Q.** For credit unions, were you investigating the employer
6 sponsor of some of these credit unions to see if it was in a
7 similar industry as FirstEnergy Corporate, your employer's
8 sponsor?

9 **A.** Some of the words we had looked up were "Power," and
15:52:05 10 that was affiliated with some of the energy, and we also
11 looked up "Energy"; so, yes, some of those were.

12 **Q.** Did part of your review of the NCUA results include
13 looking at geographic locations for these other credit
14 unions?

15:52:19 15 **A.** That is definitely something we noticed, too, that if
16 we chose a certain word, I know there was a credit union in
17 Bridgeville, PA, that had a word in it, which was one of the
18 ones that we were looking at, so then we felt that was
19 probably not the best choice for us to use.

15:52:36 20 **Q.** Did your research also involve doing Internet research
21 on some of these other credit unions in an effort to
22 determine whether there was any overlap in any other respect
23 or any other basis to where that could be confusing if you
24 adopted that mark?

15:52:48 25 **A.** Yes. Everything is going through our mind now to try

1 to make sure that we do what we need to do correctly.

2 Q. And you personally were doing some of this research,
3 correct?

4 A. Yes.

15:52:58 5 Q. And that's in addition to your responsibilities as CEO?

6 A. Correct.

7 THE COURT: Let's clarify. I appreciate that last
8 question, you personally were doing some of this research.
9 Who else? When you say "we" checked the trade names or "we"
10 checked with NCUA, who else did this besides you?

11 THE WITNESS: Our operations manager, he may have
12 also looked up some words, you know, choices as well.

13 THE COURT: Apart from you and your operations
14 manager, who else are you aware of participated in the
15 search for new names?

16 THE WITNESS: I know that I had sent an e-mail out
17 to the board stating if you wanted to look on the NCUA
18 website while we're coming up with names, then I gave them
19 the link so that they could perform some of that themselves.

15:53:53 20 I do not know if they had done that when they were
21 making their opinions as to what the name should be, the new
22 word should be to put in.

23 THE COURT: So is it fair to assume then that you
24 were the person looking for the replacement name?

15:54:11 25 THE WITNESS: When you say "looking," I could

1 have -- I would have been the one on the websites, but
2 everybody was trying to determine what a good word would be
3 for our name.

4 THE COURT: Tell me what persons other than
15:54:22 5 yourself were doing to determine what a replacement name
6 would be.

7 THE WITNESS: Again, I don't know if anybody was
8 doing any searches on their own, just involvement with
9 conversations and through e-mails as to what a good word
15:54:41 10 would be to include in our name.

11 THE COURT: Conversations with whom?

12 THE WITNESS: The Board of Directors.

13 THE COURT: E-mails with whom?

14 THE WITNESS: The Board of Directors.

15:54:50 15 THE COURT: Thank you, Ms. Dickson. You may
16 proceed.

17 BY MS. DICKSON:

18 Q. Ms. Momeyer, can you tell me approximately how many
19 hours you have spent since November 7th in the process of
15:55:04 20 reviewing the CUNA information, the trademark websites and
21 developing a list of potential names and sort of
22 investigating those on the website in the manner we have
23 just discussed?

24 A. I can't. I didn't track it. But it's been a
15:55:26 25 significant amount of time, just because of the seriousness

1 of everything now. We felt that that's what we needed to be
2 doing.

3 Q. Maybe let me ask it to you this way: Every day since
4 this order issued, have you done something to try to
15:55:40 5 determine what a new name should be?

6 A. Yes.

7 Q. And why are you spending the time to investigate a new
8 name? Why not just put -- pick some word that you like and
9 just put it on there and be done? Why are you investing
15:55:55 10 this time?

11 A. We still need to make a good representation of our
12 credit union and who can join our credit union. We're not a
13 bank. We're not available to the community to join our
14 credit union. So we need to -- we feel it's important for
15:56:09 15 us to have the "FirstEnergy" name in our credit union.
16 That's who our sponsor company is. That's who we can offer
17 membership to.

18 And we wanted to make sure that -- it's important to
19 us. It's important to us, and I say -- myself, that we want
15:56:22 20 to present the best that we can for the credit union
21 members.

22 Q. Other than your selection of this name in conjunction
23 with the Board of Directors once approvals have been put in
24 place as a result of doing all this research and feeling
15:56:40 25 like it's not an infringing name and an application is

1 filed, do you need approvals from anyone other than the NCUA
2 as to what your name is going to be?

3 **A.** Depending on which name we choose, we still believe
4 that we would -- if we kept the word "FirstEnergy" in our
15:56:54 5 name, that we would want their approval as well.

6 **Q.** Okay.

7 **A.** And with the license agreement that was presented to
8 us, then we definitely -- I believe that.

9 **Q.** And is that because the license agreement indicates
15:57:04 10 that there is an ownership of the mark that includes the
11 word "FirstEnergy," not just the word "FirstEnergy"?

12 **A.** That's what I believe, yes.

13 THE COURT: Did that license agreement exist prior
14 to my November 7th, 2012 preliminary injunction order?

15:57:20 15 THE WITNESS: No. We had thought that we were
16 going to be hearing from Corp, FirstEnergy Corp, that they
17 were going to have -- that they were going to be involved in
18 this case too. And that --

19 THE COURT: You answered my question, it didn't.

15:57:36 20 A document was presented to you that became the
21 license agreement. Did you sign that document?

22 THE WITNESS: I did.

23 THE COURT: Who else signed it, to your knowledge?

24 THE WITNESS: Myself.

15:57:46 25 THE COURT: And your signature alone was

1 sufficient for Federal -- FirstEnergy Federal Credit Union
2 to become a licensee of FirstEnergy Corp?

3 THE WITNESS: It just has my signature on it.

4 THE COURT: I am interested in moving on to

15:58:04 5 another area. You can pick up after this.

6 Are you -- do you review the pleadings filed on
7 Federal's behalf by the attorneys representing you?

8 THE WITNESS: Yes, I believe they were supplied to
9 me.

15:58:19 10 THE COURT: My question is, do you read them?

11 THE WITNESS: Yes, I read what I receive.

12 THE COURT: There was the opposition to the motion
13 to show cause, and it indicates on page 3 of that document
14 that the official charter name of FirstEnergy Federal Credit
15 Union is just what I've stated, FirstEnergy Federal Credit
16 Union, Incorporated.

17 Do you agree?

18 THE WITNESS: Yes.

19 THE COURT: And that you can use a name other than
15:58:47 20 your official name, but you must use your official name when
21 communicating with NCUA and for share certificates or
22 certificates of deposit, signature cards, loan agreements,
23 account statements, checks, drafts and other legal
24 documents.

15:59:05 25 Are you aware of that?

1 THE WITNESS: I'm aware that the word "Federal"
2 has to be in our charter, but we could be FirstEnergy --

3 THE COURT: My question is different. You have
4 your official name. You have it today. I've ordered that
15:59:19 5 you change it.

6 This pleading that I've just referred to, the
7 opposition to the motion to show cause, states that you can
8 use a different name, you can use a name other than your
9 official name, except in certain cases, and those were the
15:59:37 10 cases that I read.

11 Are you aware of that?

12 THE WITNESS: Yes.

13 THE COURT: Why didn't you take steps to limit the
14 use of your official name? You're going through all of
15:59:50 15 these steps that you've just laid on the record in response
16 to Ms. Dickson's questions to find a different name.

17 Knowing that you could use your official name in
18 certain circumstances but use a different name in other
19 circumstances, why didn't you do that?

16:00:07 20 THE WITNESS: I probably -- I didn't understand it
21 to be -- we were going to do the whole thing at once. If we
22 were going to put the name in, another word in, we were
23 going to do that all at once, and just insert that word,
24 FirstEnergy blank Federal Credit Union.

16:00:25 25 So we would take -- there's numerous steps and all

1 those pieces, that if we had -- if that's what we were going
2 to do, put another word in, then that would have been what
3 we would have proceeded to do.

4 THE COURT: Am I correct in understanding you to
16:00:44 5 say that while you knew that you could use a different name
6 other than the official name, you chose not to because you
7 wanted to do it all at one time?

8 THE WITNESS: If I can backtrack. When you say
9 did I know, I think what I'm thinking of was when we had
16:00:59 10 talked way back about being able to use a trade name, I did
11 not tie that into what your documentation was. I was still
12 along the lines of do we want to -- do we want to, the
13 credit union, operate, like you said, with your charter name
14 FirstEnergy Federal Credit Union, but let's use something
16:01:28 15 else and have that as a tag line.

16 So, no, I didn't think on November 7th that that
17 was a possibility, we should start doing that to choose a
18 different name as part of the trademark. I thought that we
19 would do it all at one time and insert a word if that's what
16:01:51 20 we had.

21 And we had offered settlement on the 9th, I
22 believe it was, and that was what was in our settlement, we
23 would offer them monetary and insert a word. So that was
24 our offer to do that on the 9th of November, where we were
16:02:08 25 prepared to insert a word, if that was going to be part of

1 the settlement.

2 THE COURT: Did you identify the word you were
3 prepared to insert?

4 THE WITNESS: No. We didn't have -- we did not
16:02:20 5 insert a specific word.

6 Like I said, we've narrowed it down, but we were
7 under the impression that the settlement was continuing and
8 that we thought that they would accept the settlement terms
9 for the money and to insert the name, because at that point,
16:02:36 10 we felt like your order came out, what else can -- there
11 wasn't too much else we could do, and we were hoping to
12 settle.

13 But we were willing to put that word into that
14 name.

16:02:49 15 THE COURT: Ms. Dickson, you may continue.

16 Thank you, Ms. Momeyer.

17 BY MS. DICKSON:

18 Q. Ms. Momeyer, when you reached out for settlement on the
19 9th, you indicated that you didn't propose a specific word.

16:02:57 20 Did you propose any limitations on what that second
21 word might be?

22 A. I believe our understanding all along was that we
23 shouldn't pick something that was the letter -- that began
24 with the letter "F."

16:03:08 25 Q. And did you propose that position in an effort to help

1 narrow what the second word could be that would be agreeable
2 in an effort of furthering settlement?

3 **A.** I don't recall if that was in the e-mails that Matt
4 Pritchard had sent, but I believe that was part of what we
16:03:25 5 had discussed.

6 **Q.** Okay. And I just want to ask you one other question
7 about the use of a trade name.

8 Is it your understanding that if you had adopted a
9 trade name on the 7th, on your website, for example, would
16:03:38 10 that have put you in compliance with the court's order?

11 **A.** I believe we were going to need -- that we would have
12 had to have put that -- inserted that word to comply, and
13 that we were working towards settlement to do that.

14 **Q.** I understand that. But I guess my question is, as the
16:03:57 15 court pointed out, there are exceptions to where you cannot
16 use a trade name until it gets approved as your official
17 charter name.

18 So even if you had selected "Allegheny" as your trade
19 name on the 8th, okay, and you were going to be FirstEnergy
16:04:12 20 Allegheny on your website, on some of the documents that the
21 court referenced, you would have to continue to use
22 FirstEnergy Federal Credit Union.

23 Is that your understanding?

24 **A.** I'm not understanding what you're asking.

16:04:26 25 **Q.** That's okay. What I'm asking you is, when you received

1 the court's order and you're thinking about how to comply,
2 are you aware at that point in time that you are able to
3 adopt a trade name that is different than your charter name?

4 **A.** I did not put two and two together on that piece.

16:04:45 5 **Q.** Okay. You've indicated that you went through a name
6 change roughly a year ago when you adopted FirstEnergy
7 Federal Credit Union; is that correct?

8 **A.** Correct.

9 **Q.** And could you tell us, generally, the steps that you
16:05:00 10 have to walk through in order to change your name with the
11 NCUA and adopt a new trade name?

12 **A.** The first step that we had done was brainstorm with the
13 Board of Directors to see which name we thought would best
14 fit our membership.

16:05:18 15 **Q.** Uh-huh.

16 **A.** And then we researched on the NCUA site to see what was
17 out there.

18 And then we went to FirstEnergy Corp to get their
19 approval, which is who we believed that we needed to have
16:05:36 20 that approval from. They were fine, so we went to NCUA with
21 our letter to ask for that name.

22 And once we got that approval, then we received the
23 certificate that we would need to supply to our vendors and
24 other entities to start that name change.

16:05:56 25 **Q.** And when you say "vendors," can you give me a sense of,

1 are we talking envelopes and stationery and business cards,
2 or are we talking something different?

3 **A.** No, there's numerous vendors. We have numerous
4 computer systems that we have for our loan processing. We
16:06:14 5 have systems that we do for our data processing. We have
6 our corporate federal credit union that we process our
7 electronic fund transfers through.

8 There are multiple and numerous entities that we dealt
9 with to change the name.

16:06:33 10 **Q.** Can FirstEnergy Federal wipe out its name throughout
11 all of its systems and things that you're using vendors with
12 on its own, or does it require the use of vendors?

13 **A.** Unfortunately, it requires the use of vendors to take
14 those steps.

16:06:47 15 **Q.** Okay. And why is that?

16 **A.** They have control of the systems.

17 **Q.** Okay. So it's not as easy as just changing a template
18 in a Word document or something like that?

19 **A.** No.

16:06:57 20 **Q.** And then just one clarification question, Diane.

21 Prior to receiving the written license agreement from
22 FirstEnergy Corp that you have since executed, was it your
23 understanding that a license existed before you received the
24 written license agreement?

16:07:17 25 **A.** No.

1 **Q.** Did you believe that you were a licensee obligated to
2 seek from FirstEnergy Corp their permission to use their
3 mark?

4 **A.** Yes.

16:07:26 5 **Q.** And did you have an understanding as to what you were
6 allowed to do or not allowed to do with the "FirstEnergy"
7 mark if you were using it, prior to the court's order?

8 **A.** Any documents that we wanted to display, we went
9 through FirstEnergy Corporate Communications. They approved
16:07:53 10 whatever we would create.

11 So, yes, we felt that we needed to run things through
12 them.

13 **Q.** And other than putting the license agreement in writing
14 when you received that on the -- from Ms. Barnes, when you
16:08:05 15 looked at that written agreement, did it materially change
16 your understanding as to how you were to treat the
17 "FirstEnergy" mark or what your relationship was with
18 FirstEnergy Corp?

19 **A.** No.

16:08:14 20 **Q.** So even before the written agreement, that was your
21 understanding of how to proceed in relation to the
22 "FirstEnergy" mark?

23 **A.** Right.

24 MS. DICKSON: Can I have a moment, Your Honor?

16:08:25 25 THE COURT: You may.

1 (Pause.)

2 BY MS. DICKSON:

3 Q. Diane, just one other question.

4 You've indicated that you've had conversations among
16:08:48 5 people that work at FirstEnergy Federal Credit Union,
6 correct, your operations manager, for example?

7 A. Correct.

8 Q. You've had conversations with the Board of Directors,
9 correct?

16:08:56 10 A. Yes.

11 Q. And you've obviously talked to Mr. Pritchard and to me
12 about the legal proceedings.

13 Have you talked to anyone else in an official capacity
14 about these proceedings?

16:09:07 15 A. In what official capacity?

16 Q. And maybe I'll just ask you, have you had conversations
17 with your insurance carrier about these proceedings --

18 A. Yes.

19 Q. -- since receiving the order?

16:09:22 20 A. Yes.

21 Q. And without divulging the content of those
22 conversations, can you tell me generally the nature or
23 purpose of those conversations?

24 A. We, as a board, wanted to know, you know, as far as the
16:09:35 25 insurance side of it went, you know, what we were -- what

1 the credit union would be covered for under the insurance so
2 that we could -- we didn't want to have our credit union
3 members be out money if that wasn't the correct decision to
4 make.

16:09:54 5 We also, of course, have been in contact with them for
6 settlement information, you know, dollar figures that they
7 would be able to do within the settlement.

8 Q. And when you say "dollar figures they would be able to
9 do," that would be to provide a settlement to Family to
16:10:10 10 compensate them --

11 A. Correct.

12 Q. -- for their claim to damages?

13 A. Correct.

14 MS. DICKSON: I have no further questions, Your
16:10:15 15 Honor.

16 THE COURT: Ms. Dickson, I have one.

17 Before signing the license agreement, did you call
18 together the members of the Board of Directors for a vote?

19 THE WITNESS: I believe that they received it
16:10:23 20 through the e-mail.

21 THE COURT: Did you seek the approval of the board
22 before signing the agreement?

23 THE WITNESS: Yes.

24 THE COURT: And you did that by e-mail?

16:10:34 25 THE WITNESS: Right. They received the e-mail

1 with the agreement.

2 THE COURT: No, I think you're answering something
3 that I'm not asking.

4 What I think you're telling me is they have the
16:10:44 5 agreement and it was sent to them by e-mail. Am I correct?

6 THE WITNESS: Correct.

7 THE COURT: What I'm asking is, before you signed
8 it, did you seek their approval? Did you call them, get a
9 phone vote, e-mail vote, meet in person, "Let's vote on
16:10:58 10 whether or not I sign this"?

11 THE WITNESS: There's been multiple e-mails. I'm
12 not certain if I received an e-mail back from each one of
13 them individually stating whether they approved it or not.

14 THE COURT: But you sought the approval?

16:11:14 15 THE WITNESS: Yes, right.

16 THE COURT: You asked if they approved?

17 THE WITNESS: Right. I mean, I wouldn't make that
18 decision on my own.

19 THE COURT: And you signed it having received
16:11:23 20 majority response, what?

21 THE WITNESS: I would have to look back at my
22 e-mails.

23 THE COURT: It can't be that hard. You tell me
24 you wouldn't make the decision on your own.

16:11:37 25 THE WITNESS: Right, but I --

1 THE COURT: One at a time. She is wonderful, but
2 she can't take us both, my court reporter, so let me speak
3 and then you can speak.

4 If you tell me that you would not have made that
16:11:46 5 decision on your own, and then you tell me you're not sure
6 if you received responses or how many responses, that
7 doesn't make sense. Either you received enough yes votes or
8 you didn't seek votes, you just signed.

9 Just give me the answer, if you know. Do you
16:12:05 10 remember?

11 THE WITNESS: I 100 percent don't remember if I
12 have e-mails that say "I approve" from them individually.

13 THE COURT: Thank you.

14 Is there any follow-up to that before Mr. Movius
16:12:30 15 cross-examines?

16 MS. DICKSON: No, Your Honor.

17 THE COURT: Thank you, Ms. Dickson.

18 Mr. Movius?

19 MR. MOVIUS: Thank you, Your Honor.

16:13:00 20 CROSS-EXAMINATION OF DIANE LYNN MOMEYER

21 BY MR. MOVIUS:

22 Q. Ms. Momeyer, you're aware that -- are you aware that
23 the preliminary injunction issued by the court indicated
24 that it was effective immediately?

16:13:16 25 A. Yes.

1 Q. What did you understand that to mean?

2 A. My understanding was that we were still pursuing
3 settlement, and that we also had the opportunity to appeal,
4 and that we did have active conversations regarding the
16:13:37 5 settlement, and that we -- and that The Webb Law Firm was
6 taking actions to pursue the appeal.

7 Q. And so was it your understanding then that the
8 existence of settlement discussions and the pursuit of an
9 appeal meant that FirstEnergy Federal did not have to comply
16:13:56 10 immediately?

11 A. That was my understanding.

12 Q. And where did you get that understanding?

13 A. Unless that was just from my recollection of stating
14 that we were still going for settlement and we still had the
16:14:11 15 opportunity to appeal.

16 Q. Whose statement was that?

17 A. Well, I know in working with The Webb Law Firm, that we
18 would discuss what our options were and what our next steps
19 would be.

16:14:25 20 Q. Were you ever told at any time that immediate
21 compliance, meaning the day the order was issued, was
22 required?

23 A. Not that I recall.

24 Q. Were you ever told that not complying immediately the
16:14:42 25 day the order was issued could have potential consequences

1 for FirstEnergy Federal or anybody else?

2 **A.** Not in those words, because we were pursuing other
3 avenues. We would not have -- "we," meaning me and the
4 board, would not have blatantly disregarded that if it
16:15:08 5 wasn't our interpretation that we were still pursuing
6 settlement and had the opportunity for appeals.

7 **Q.** Did you have conversations with anyone about what the
8 word "immediately" in the preliminary injunction meant?

9 **A.** No.

16:15:24 10 **Q.** Did you ask anybody questions regarding what that
11 required?

12 **A.** No.

13 **Q.** FirstEnergy Federal does continue to use the name
14 FirstEnergy Federal Credit Union, correct?

16:15:36 15 **A.** As of right now, yes.

16 **Q.** So have you personally talked to anybody with the
17 National Credit Union Administration regarding this case at
18 all?

19 **A.** No.

16:15:54 20 **Q.** Do you know if anyone acting on behalf of FirstEnergy
21 Federal Credit Union has ever talked to a representative of
22 NCUA regarding this case?

23 **A.** Not to my knowledge. We have our -- as Matt Pritchard
24 had stated, we have our experience as to what we did the
16:16:13 25 last time, so we have an understanding of how that process

1 works, and the next -- and when we go to the NCUA with the
2 name, it would be the final name that we have chosen.

3 Q. So nobody went to NCUA on behalf of Federal and said,
4 "There's a lawsuit going on and we may have to change our
16:16:32 5 name"?

6 A. No. Our NCUA examiner is well aware of it. I have
7 informed our NCUA examiner from the beginning of this, and
8 recent.

9 Q. And how did you inform the NCUA examiner regarding this
16:16:47 10 matter?

11 A. Well, when she would have -- she would have been in our
12 office in the summertime, and I spoke with her about it at
13 that point. So they are aware of this. There's
14 different -- when I say "examiners," that's different than
16:17:09 15 the -- whatever the office is that sends out the names --
16 allows the names.

17 Q. So you haven't talked to anybody at NCUA with
18 responsibility for approving names, correct?

19 A. We were waiting until we chose that final name. If we
16:17:23 20 had to do that, if that was all part of the settlement
21 agreement. Because it's been up and down as far as what we
22 thought might happen with the settlement.

23 Q. So that's a no, nobody has contacted the personnel at
24 NCUA responsible for name changes about this lawsuit --

16:17:42 25 A. No.

1 Q. -- on behalf of Federal, correct?

2 A. Correct.

3 Q. Now, who with respect to FirstEnergy Federal is in
4 charge of the name change process?

16:17:56 5 A. I would probably be the ringleader.

6 Q. When you say "ringleader," does that mean you
7 essentially have responsibility on behalf of the corporation
8 for leading the name change process?

9 A. I would probably be the one to implement the letter to
16:18:10 10 NCUA after the Board of Directors decides what name that
11 would be.

12 Q. Now, you talked about a process you've been going
13 through regarding looking at the NCUA website, doing various
14 searches and whatnot.

16:18:30 15 How did you decide on that process?

16 A. How did I decide on that process?

17 Q. Did you ask anybody what you should do to begin the
18 steps of the name change?

19 A. That's the same steps that we had done -- that's just
16:18:47 20 what I know.

21 Q. Maybe I will back up a little bit.

22 When you were previously being questioned by
23 Ms. Dickson, I wrote down I think what I understood to be
24 about five different steps of the name change.

16:19:02 25 You listed brainstorming, then researching on the NCUA

1 website, going to FirstEnergy Corporation for approval,
2 going to NCUA for approval, and then actually implementing
3 the name change by working with vendors, including printers
4 and those who deal with your computer software and whatnot.

16:19:24 5 Is that a fair characterization of the steps?

6 **A.** Yes.

7 **Q.** Now, you identified about -- looking at 10 to 20
8 different names.

9 Have you settled on a name yet?

16:19:40 10 **A.** We've narrowed it down, but no, we don't have one
11 specific name, because we were going to take that -- once we
12 picked it, then we would take the time and the expense to
13 finalize that.

14 **Q.** How many have you narrowed it down to?

16:19:55 15 **A.** Recently, we had two, two that the board had said that
16 they would be fine with.

17 **Q.** And what are those names?

18 **A.** Choice and Premier.

19 **Q.** Meaning?

16:20:08 20 **A.** FirstEnergy Choice Federal Credit Union, FirstEnergy
21 Premier Federal Credit Union.

22 **Q.** When do you expect to actually choose between those?

23 **A.** As soon as we need to.

24 **Q.** When do you understand that you need to do that by?

16:20:26 25 **A.** All along, like I said, we thought we had the

1 settlement issues going on and the appeal, so that's why we
2 hadn't implemented anything, because it would be hard for us
3 to go back -- it would be -- we couldn't -- once we change a
4 name, we have to go with it. There's too much time,
16:20:47 5 expense, vendors involved to be able to backtrack and change
6 our name back or choose something else.

7 THE COURT: Are you telling this court under oath
8 that you did not understand that effective November 7, 2012,
9 you were obligated to change your name?

16:21:06 10 THE WITNESS: We believed -- I believed that --

11 THE COURT: Yes or no? Did you understand that
12 when I issued that order imposing the preliminary
13 injunction, that you were then obligated to change your
14 name?

16:21:21 15 THE WITNESS: No. Can I continue? Because of the
16 settlement and because of the opportunity to appeal.

17 So, no, honestly, we didn't think that -- we
18 thought there were other avenues.

19 THE COURT: Appealing or seeking a stay, whether
16:21:35 20 from this court or from an appellate court, does absolutely
21 nothing to change the full force and effect of the order
22 that Federal has been under since November 7th, 2012.

23 THE WITNESS: I did not understand that.

24 THE COURT: Thank you.

16:21:56 25 Mr. Movius, you may continue.

1 BY MR. MOVIUS:

2 Q. Just to stay on that topic for a moment then, were you
3 ever made aware of the fact that this court denied
4 FirstEnergy Federal's two motions to stay the preliminary
16:22:09 5 injunction?

6 A. Can you tell me when those dates were?

7 Q. We'll get the exact -- I believe --

8 A. Was the one just today?

9 Q. No, 12 days ago, I believe. I can get you an exact
16:22:41 10 date, though.

11 The order I'm referring to is on November 16th.

12 A. That's the first one?

13 Q. Yes.

14 A. Yes, and then we were appealing and still trying to
16:23:04 15 settle. So that was my understanding, that those were our
16 options, to appeal and work with settlement.

17 THE COURT: So you did not understand that unless
18 my ruling was overturned by a higher court, it stood, you
19 were bound by it?

16:23:25 20 THE WITNESS: Can you repeat that, please?

21 THE COURT: Unless my ruling was overturned, you
22 were to be in compliance, change your name as I ordered on
23 November 7?

24 THE WITNESS: No, because I thought we could still
16:23:40 25 do the appeal and the settlement. And we had been working

1 with them with settlement, that we were offering settlement.

2 THE COURT: Mr. Movius, you may go ahead.

3 BY MR. MOVIUS:

4 Q. Now, are you aware that FirstEnergy Federal also filed
16:23:57 5 a motion to stay the injunction with the Court of Appeals?

6 A. I receive the e-mails from The Webb Law Firm, and I
7 read them as much as I could. I don't know if I get them as
8 timely as they're sent out. And I try to read through them.
9 But I'm relying on our counsel for -- I'm not able to fully
16:24:25 10 understand all of that and dissect it without their
11 assistance.

12 Q. Were you made aware of the fact that The Webb Law Firm
13 filed a motion with the Sixth Circuit Court of Appeals to
14 stay the preliminary injunction?

16:24:39 15 A. Yes.

16 Q. Are you aware of whether there's been a ruling on that
17 motion yet?

18 A. We just found out a couple hours ago.

19 Q. And that ruling being that the Sixth Circuit denied the
16:24:50 20 motion to stay?

21 A. Correct.

22 Q. You've also made reference a number of times to
23 settlement negotiations. It would be correct to say that
24 FirstEnergy Federal has never once, in the course of those
16:25:06 25 negotiations, identified a specific name that it would

1 change to as part of a settlement, correct?

2 **A.** Correct, because we were under the impression that it
3 wasn't a sticking point as long as it didn't begin with the
4 letter "F."

16:25:22 5 **Q.** Are you aware of any -- were you informed of any
6 communications between myself and Mr. Pritchard where this
7 issue was addressed?

8 **A.** Which issue?

9 **Q.** About the name change that you refer to as not a
16:25:37 10 sticking point.

11 **A.** Can you elaborate? I'm not sure.

12 **Q.** Let's do it this way: Following the injunction,
13 FirstEnergy Federal communicated to FirstEnergy Family sort
14 of a framework or a proposal for settlement, correct?

16:26:00 15 **A.** Correct.

16 **Q.** That framework did not include a specific proposed
17 name, correct?

18 **A.** I don't believe so.

19 **Q.** Were you ever informed of what Family's response on
16:26:09 20 that point was after reviewing that offer?

21 **A.** I know that they didn't accept the terms.

22 **Q.** Were you given any explanation of why?

23 **A.** I don't recall.

24 **Q.** So you're not aware of whether or not one of the
16:26:29 25 reasons the offer was rejected was because it didn't include

1 a specific proposed name?

2 **A.** No.

3 **Q.** Were you ever informed that one of the reasons the
4 offer was rejected was because it did not include a specific
16:26:42 5 time frame for implementation?

6 **A.** No.

7 **Q.** Do you recall what the monetary component of that offer
8 was?

9 **A.** I'm not sure which offer, because there's been a few
16:26:54 10 that I know that we had offered.

11 **Q.** The first one.

12 **A.** I'm thinking -- was it \$30,000?

13 **Q.** I believe it was 30- or 35-, I could check, but that
14 sounds about the right ballpark.

16:27:12 15 What was your understanding at that point of what
16 FirstEnergy Family's monetary requirements for settlement
17 were?

18 **A.** I believe it was more than that.

19 **Q.** After you learned that that settlement offer had been
16:27:32 20 rejected, what was your understanding of FirstEnergy
21 Federal's need to comply with the preliminary injunction?

22 **A.** That we had filed an appeal and that we were still --
23 we've always been hopeful for settlement between Family and
24 Federal and CUNA for our insurance with the monetary amount.

16:27:56 25 **Q.** Going back then to this process here of looking for --

1 or trying to settle on a new name.

2 Since the November 7th order, I know you said you
3 couldn't give an estimate of how many hours you spent on
4 complying, but can you give an estimate of the percentage of
16:28:13 5 your time that you spent dealing with complying with the
6 court's order versus the time you've spent on the ordinary
7 operations of FirstEnergy Federal Credit Union?

8 **A.** Forty percent.

9 **Q.** Now, you had also indicated that you believed that -- I
16:28:44 10 want to talk to you for a minute about FirstEnergy
11 Corporation's role in this process. You indicated, and I
12 don't want to mischaracterize your testimony, but you said
13 that following the preliminary injunction order, that you
14 thought that you would hear from FirstEnergy Corporation; is
16:29:04 15 that correct?

16 **A.** The day of the hearing on the 6th of November, we
17 had -- Matt Pritchard had said that he was still hopeful
18 that FirstEnergy Corp would be becoming involved in the
19 case, because it was his understanding that they felt that
16:29:25 20 they owned the mark and that that could have a potential
21 bearing on this case.

22 **Q.** When he referred to "that mark," do you know what mark
23 he was referring to?

24 **A.** My assumption is "FirstEnergy."

16:29:39 25 **Q.** Did you have any discussion with him about whether

1 FirstEnergy Corporation claimed that it had ownership of the
2 name FirstEnergy Family Credit Union?

3 **A.** It's our understanding that FirstEnergy Corp has the, I
4 believe, the class 36 financial code, or the class for the
16:30:03 5 trademark for financial, and that they had an agreement with
6 FirstEnergy Capital out of Canada that had a carve-out in it
7 for credit union services.

8 So we believed that FirstEnergy would control any
9 credit union or financial entity that would have that word
16:30:29 10 "FirstEnergy" in it.

11 **Q.** How did you come to have that belief?

12 **A.** Through The Webb Law Firm and in seeing what we saw
13 with that -- with that agreement with FirstEnergy Capital
14 from Canada.

16:30:48 15 **Q.** You indicated that Mr. Pritchard had indicated to you
16 on November 6th that he believed that FirstEnergy
17 Corporation would be taking some sort of steps; is that
18 correct?

19 **A.** Yes.

16:31:02 20 **Q.** Can you tell me what specifically he said to you
21 regarding that?

22 MR. PRITCHARD: Your Honor --

23 THE COURT: A new question. You don't have to
24 answer that question. It's become painfully obvious that
16:31:17 25 Ms. Momeyer does not understand the effect of the court's

1 order; and based upon her testimony, it's become obvious
2 that at least based upon what you've said here today, that
3 misunderstanding has not been clarified by counsel. It's
4 shocking and it's disappointing. That record is extremely
16:31:36 5 clear, well beyond anything that is clear and convincing.

6 Why don't you move on to any other part that you
7 need to shore up. The court is pretty well satisfied.

8 I do want to take this opportunity to ask
9 Ms. Momeyer, relative to the other persons who are here with
16:31:54 10 you today who serve as members of the Board of Directors for
11 FirstEnergy Federal Credit Union, is it you who was acting
12 regarding this name change situation, while keeping these
13 people involved possibly through e-mail or other
14 communications, it was you acting with The Webb Law Firm,
16:32:16 15 not the individuals sitting in front of you in the back of
16 the courtroom?

17 THE WITNESS: I have more interaction possibly at
18 times on phone conversations with The Webb Law Firm. I
19 don't make decisions on my own, so we do, you know, involve
16:32:35 20 the board and collectively discuss things. But we're
21 receiving --

22 THE COURT: Have you ever asked the board members
23 something like this: "We are under a court order to change
24 our name; however, we're going to hold out and appeal, we're
16:32:52 25 going to hold out and try to settle. Are you okay doing

1 that?"

2 Did you ever say something like that to the board
3 members?

4 THE WITNESS: No, no.

16:33:02 5 THE COURT: Do you know if anyone else said
6 something like that to the board members?

7 THE WITNESS: No, not in those terms. We've had
8 discussions with The Webb Law Firm with the Board of
9 Directors on the phone calls, you know, so that they could
16:33:18 10 be informed as well.

11 But if you wanted to call every one of them up
12 here, I don't think that any of us thought that -- thought
13 that the steps that we were taking were not sufficient.

14 THE COURT: Thank you.

16:33:35 15 Mr. Movius, you may continue.

16 BY MR. MOVIUS:

17 Q. You referred a couple times to the expense of changing
18 the name and only wanting to do that once.

19 Do you know how much it would cost, in sort of hard
16:33:51 20 dollars, FirstEnergy Federal to change its name?

21 A. When we changed the name earlier this year, it was
22 around \$10,000.

23 Q. And as far as steps or interim steps, I want to ask you
24 about your website.

16:34:14 25 Does NCUA require FirstEnergy Federal to use any

1 particular domain name for its website?

2 **A.** Not that I'm aware of, no.

3 **Q.** So you could change the domain name without conferring
4 with NCUA?

16:34:26 5 **A.** I believe so, yes.

6 **Q.** And you could do so without conferring with FirstEnergy
7 Corporation, correct?

8 **A.** If we had "FirstEnergy" in it, I would ask for their
9 opinion or approval. That's still the way I feel.

16:34:45 10 **Q.** But if you didn't use "FirstEnergy" as a part of the
11 new domain name, you wouldn't have to check with them,
12 correct?

13 **A.** If it did not have "FirstEnergy" in it? No.

14 **Q.** And you're aware that the preliminary injunction
16:34:59 15 enjoined use of the FirstEnergyFCU.com domain name, correct?

16 **A.** Yes.

17 **Q.** And yet FirstEnergy Federal Credit Union continues to
18 use that domain name, correct?

19 **A.** We do.

16:35:14 20 MR. MOVIUS: That's all, Your Honor.

21 THE COURT: Any follow-up examination,
22 Ms. Dickson?

23 MS. DICKSON: No, Your Honor.

24 THE COURT: You may step down, Ms. Momeyer.

16:35:24 25 THE WITNESS: Thank you.

1 MR. SKERIOTIS: Your Honor, may I speak?

2 THE COURT: Why don't you approach the podium,
3 sir. Mr. Skeriotis, correct?

4 MR. SKERIOTIS: Yes, Your Honor.

16:35:41 5 THE COURT: Would you please state and spell it
6 for the record?

7 MR. SKERIOTIS: Yes. John Skeriotis,
8 S-k-e-r-i-o-t-i-s.

9 Good afternoon, Your Honor. My name, again, is
16:35:50 10 John Skeriotis. I represent today here Ms. Heather Barnes,
11 as well as Mr. Dave Winston on behalf of FirstEnergy
12 Corporation.

13 As background, I am a shareholder in the law firm
14 of Brouse McDowell, as well as the chair of the intellectual
16:36:08 15 property group of Brouse McDowell.

16 Pursuant to some of the comments made today, Your
17 Honor, with respect to Ms. Barnes' drafting of the license
18 agreement, because this is a different and unique situation,
19 I'm not sure how the court would expect or allow myself to
16:36:22 20 participate in some of the examinations since, in fact, some
21 of the witnesses have some knowledge with respect to the
22 license agreement.

23 I would have liked or would like some opportunity,
24 if the court deems that appropriate, to examine some of the
16:36:38 25 witnesses with respect to the drafting of the license

1 agreement, and the license agreement, and any communications
2 between them and FirstEnergy Corp and/or Brouse McDowell.

3 THE COURT: Is it your wish to examine
4 Ms. Momeyer?

16:36:52 5 MR. SKERIOTIS: I would like to ask her a few
6 questions, if the court allows that.

7 THE COURT: I will. And if I find that your
8 questions are not helpful to the decision I intend to make
9 today, I'll let you know that.

16:37:03 10 Ms. Momeyer, will you please retake the stand?

11 MR. SKERIOTIS: Thank you, Your Honor.

12 THE COURT: You're welcome, sir.

13 Ms. Momeyer, I will remind you that you're still
14 under oath.

16:37:19 15 CROSS-EXAMINATION OF DIANE LYNN MOMEYER

16 BY MR. SKERIOTIS:

17 Q. Good afternoon, Ms. Momeyer. I'm sorry to drag you
18 back. I just have a few questions for you.

19 With respect to Ms. Barnes, do you know Ms. Heather
16:37:26 20 Barnes?

21 A. No.

22 Q. Have you ever met Ms. Barnes?

23 A. No.

24 Q. Have you ever spoken to Ms. Barnes?

16:37:30 25 A. No.

1 Q. Okay. Mr. Dave Winston, as you know, is seated back
2 here to my left. You do know Mr. Winston, correct?

3 A. I have met him once, correct.

4 Q. In fact, you met him at a mediation with respect to the
16:37:42 5 parties in this case, correct?

6 A. Correct.

7 Q. Okay. Other than that, have you ever spoken to
8 Mr. Winston?

9 A. No.

16:37:47 10 Q. We referred to a license agreement earlier. Do you
11 recall that, those discussions?

12 A. Yes.

13 Q. Okay. Do you know who drafted that license agreement?

14 A. I believe Ms. Barnes.

16:37:59 15 Q. And your belief comes from possibly your counsel,
16 correct?

17 A. Yes, yes.

18 Q. Okay. Do you know when that drafting of the license
19 agreement began?

16:38:08 20 A. I don't know when it specifically began. I know
21 that -- I believe that our counsel had provided examples of
22 other credit unions and their sponsors in regards to license
23 agreements upon Corp's request.

24 Q. Right. But do you know, when was the first time you
16:38:31 25 ever saw a draft of the license agreement that you

1 ultimately signed?

2 **A.** It was after the November -- I think it was maybe that
3 Monday following the November 6 hearing.

4 **Q.** Okay. And you don't recall as well -- since Ms. Barnes
16:38:45 5 drafted it, you don't recall when she began drafting it,
6 correct?

7 **A.** No, no.

8 **Q.** Your use of the "FirstEnergy" trademark, is it fair to
9 say that the only reason you believe -- and I say "you,"
16:38:57 10 defendants believe that they are allowed to use that mark is
11 pursuant to FirstEnergy Corp, their allowance for you to use
12 that mark?

13 **A.** Correct.

14 **Q.** Okay. Did anyone from Brouse McDowell or FirstEnergy
16:39:12 15 Corp ever tell defendant to not comply with the court's
16 order?

17 **A.** No.

18 **Q.** Did anyone from Brouse McDowell or FirstEnergy Corp
19 ever inform the defendants that the license agreement was
16:39:27 20 case dispositive?

21 **A.** No.

22 **Q.** Do you know what I mean by "case dispositive"?

23 **A.** I don't know what that means.

24 **Q.** That license agreement would end this lawsuit.

16:39:37 25 **A.** No.

1 Q. Did anyone ever tell you that?

2 A. No.

3 THE COURT: Do you recall reading a document,
4 either a letter or a pleading, with those words in it?

16:39:45 5 THE WITNESS: I do recall seeing those words, I
6 believe.

7 BY MR. SKERIOTIS:

8 Q. Do you recall in what form you saw those words? Do you
9 know who drafted those words? Do you know anything with
16:39:59 10 respect to where you saw those words?

11 A. I'm not certain.

12 Q. Okay.

13 A. I don't -- I don't know all these legal reports and
14 everything.

16:40:08 15 Q. Well, that's okay.

16 Do you know if that came from your counsel, those
17 words?

18 A. I'm thinking that's where we saw it.

19 Q. Okay. Do you know if those words -- strike that.

16:40:19 20 MR. SKERIOTIS: No further questions, Your Honor.

21 THE COURT: Mr. Skeriotis, Ms. Barnes and you are
22 both officers of the court. I am going to ask you this
23 question to decide if your answer satisfies me.

24 When was the license agreement drafted?

16:40:32 25 MR. SKERIOTIS: Prior to the November 6th order,

1 prior to -- I believe the exact date was October 29th, if
2 I'm not mistaken.

3 MS. BARNES: October 29th we were in discussions
4 about that. The actual drafting occurred October 31st, with
16:40:47 5 a draft turned November 5th.

6 THE COURT: Ms. Barnes, were you aware of my order
7 when you extended the license agreement to Federal?

8 MS. BARNES: I became aware of the order hours
9 before the agreement was drafted.

16:41:00 10 THE COURT: Hours before the drafting that began
11 in --

12 MS. BARNES: Excuse me. Before we sent it. My
13 mistake, Your Honor.

14 THE COURT: And you sent it knowing my preliminary
16:41:09 15 injunction order was in place?

16 MS. BARNES: I knew it was in place. However,
17 because as you have expressed, Your Honor, we were simply
18 trying to memorialize the agreement already in place. And
19 because it would have no effect on this case, especially
16:41:23 20 your order, that we believed that it was just reducing to
21 writing the understandings of the parties and to protect the
22 "FirstEnergy" name, and that was all.

23 THE COURT: It did not occur to you then that
24 extending that agreement that was signed could punctuate a
16:41:41 25 willful disobedience of my order?

1 MS. BARNES: That did not cross my mind, Your
2 Honor, not -- and, of course, to the extent it could be
3 implied that way, I certainly apologize on behalf of my
4 client and myself.

16:41:52 5 THE COURT: Mr. Skeriotis, I am satisfied at this
6 time.

7 Are there any other questions?

8 MR. SKERIOTIS: I do not have any other questions,
9 Your Honor. I did prepare a brief background and something
16:42:02 10 I thought would be informative to the court, but we can take
11 that up at a later time at this proceeding, if at all.

12 THE COURT: I appreciate that.

13 And am I correct in instructing Ms. Momeyer that
14 she's now able to step down? No follow-up, Ms. Dickson?

16:42:17 15 MS. DICKSON: None, Your Honor.

16 THE COURT: Thank you for returning to the witness
17 stand. You may step down.

18 MR. SKERIOTIS: Thank you.

19 THE COURT: Ms. Dickson, Mr. Pritchard, would you
16:42:27 20 like to call any other witness?

21 MR. PRITCHARD: Yes, Your Honor. Can we call
22 board member David Friend, please?

23 THE COURT: Mr. Friend, please approach to be
24 sworn.

16:42:50 25 DAVID FRIEND, of lawful age, a witness called by

1 the Defendant, being first duly sworn, was examined and
2 testified as follows:

3 LAW CLERK: Please take a seat.

4 THE COURT: Mr. Friend, you heard the instructions
16:43:08 5 I gave to Ms. Momeyer.

6 THE WITNESS: Yes, I did.

7 THE COURT: Thank you. The same would apply to
8 you.

9 When you're ready.

16:43:16 10 DIRECT EXAMINATION OF DAVID FRIEND

11 BY MS. DICKSON:

12 Q. Hello, Mr. Friend. Could you just please spell your
13 name for the record?

14 A. Yes, sir. It's David Friend, D-a-v-i-d, last name
16:43:24 15 F-r-i-e-n-d.

16 Q. And are you currently a member of the Board of
17 Directors of FirstEnergy Federal Credit Union?

18 A. Yes, ma'am.

19 Q. Were you a member -- when did you become a member of
16:43:31 20 the Board of Directors, if you recall?

21 A. Ten or fifteen years ago.

22 Q. Okay. Mr. Friend, when did you become aware of the
23 court's order on November -- the court's November 7, 2012
24 order?

16:43:44 25 A. That day or the day after. I don't remember the exact

1 date.

2 Q. Do you remember how you became aware of the court's
3 order?

4 A. Through an e-mail, I believe.

16:43:52 5 Q. Did you receive a copy of the court's order?

6 A. I did.

7 Q. And do you recall how that was transmitted to you,
8 either by Ms. Momeyer or by Mr. Pritchard?

9 A. I don't recall.

16:44:00 10 Q. Did you review the order when you received it?

11 A. Certainly.

12 Q. Do you recall what the next activity of the board was
13 upon receiving the court's order?

14 A. I think we were -- we initially awaited advice from
16:44:12 15 counsel. But I made my own interpretation as to what it
16 meant.

17 Q. Do you recall participating in a conference call among
18 the Board of Directors upon receiving the order either the
19 day of or the next day?

16:44:28 20 A. I don't remember a specific call, but I suspect that we
21 had one.

22 Q. Do you recall having a conference call, regardless of
23 the time frame, where the court's order was discussed?

24 A. Yes.

16:44:37 25 Q. And could you please tell the court what your

1 understanding was of the court's order?

2 **A.** I think my basic understanding was that there were
3 multiple pieces to it.

4 One, because we did not -- I certainly didn't
16:44:54 5 understand the court's actions implying that we could use a
6 trade name in lieu of FirstEnergy -- or FirstEnergy Federal
7 Credit Union. That strict compliance would be impossible,
8 because we could not transact with our members. We would
9 effectively have to freeze their funds. And we couldn't
16:45:22 10 sign checks, we couldn't do anything in action as
11 FirstEnergy Federal Credit Union.

12 That subtlety was completely lost on me, unfortunately.

13 **Q.** Let me ask you this: Is it your understanding that
14 even if you adopted a trade name upon receipt of the court's
16:45:37 15 order, you would still not be in compliance with the court's
16 order?

17 **A.** Exactly.

18 THE COURT: Mr. Friend, who was on the phone call,
19 the conference call that you're talking about?

16:45:48 20 THE WITNESS: I don't recall.

21 THE COURT: How did you get on? Did you dial in,
22 or did someone call you? You don't recall any other person
23 on the line?

24 THE WITNESS: I suspect most of the board and
16:46:00 25 Diane and Mr. Pritchard. But I don't recall the details of

1 that call, so it's a little difficult to --

2 THE COURT: And my question was, who else was on
3 the call, not the details of the call. So you've just said
4 most of the other board members, Mr. Pritchard, Ms. Momeyer?

16:46:19 5 THE WITNESS: Yeah, that would be my expectation.

6 THE COURT: Your recollection?

7 THE WITNESS: Yeah.

8 THE COURT: Thank you, Ms. Dickson.

9 BY MS. DICKSON:

16:46:30 10 Q. Was it your understanding that the court's order was --
11 what was your understanding of when the court's order went
12 into effect?

13 A. I believed that it was post-appeal. The framework for
14 that, I work in a world where there are many times where my
16:46:45 15 company has issued a permit and the permit is nonexistent
16 until the appeals have been exhausted.

17 So I believe that I applied that framework to this case
18 and knew that there was an appeal process underway and the
19 settlement discussions.

16:47:01 20 So I thought between the two of those, then we could
21 take action. In the meantime, we were trying to prepare.

22 Q. You referenced the settlement discussions, and you were
23 present for Ms. Momeyer's testimony regarding the ongoing
24 settlement discussions.

16:47:13 25 What was your understanding of why the settlement

1 discussions would affect the date that this court's order
2 would go into effect?

3 **A.** I believe that if there was a settlement between the
4 two parties, that the strict application of the November 6
16:47:29 5 order would be unnecessary.

6 **Q.** Was it your understanding that a representation had
7 been made that plaintiff might not seek immediate
8 enforcement of the court's order?

9 **A.** It was.

16:47:42 10 **Q.** What was the board's reaction to seeing the court order
11 in a sense of what tasks were before the board?

12 **A.** I can't speak for the rest of the board, but for
13 myself, I was surprised at the severity of it. Again, not
14 understanding the subtlety of the possibility of using a
16:48:02 15 trade name instead. I focused on the literal reading of it.

16 The way I read it was that it was impossible for us to
17 immediately comply with unless we froze the assets of our
18 members.

19 **Q.** So was it your understanding, then, upon reading it
16:48:18 20 that it was immediately enforceable, and that to comply, you
21 would have to cease all use on any document or on any form
22 of FirstEnergy Federal Credit Union?

23 **A.** Well, the latter part is correct.

24 The first part, you said "immediately enforceable." I
16:48:31 25 thought we had to exhaust the appeals before it was

1 enforceable.

2 Q. Okay. Were you aware that a stay was filed on the date
3 that the court's order -- a request for stay was filed on
4 the date of the court's order?

16:48:46 5 A. I was.

6 Q. And were you aware that the reason for asking for that
7 stay was to allow for compliance in the sense of developing
8 a new name and doing the activities that Ms. Momeyer has
9 identified?

16:48:57 10 A. Yes, ma'am.

11 Q. And why would that stay request, in your mind -- or was
12 it, in your mind, necessary?

13 A. Again, because strict compliance with the order would
14 have forced us to cease operations, and that was impossible
16:49:12 15 unless we were to put in jeopardy all of our members,
16 including my wife.

17 MS. DICKSON: I have no further questions, Your
18 Honor, for this witness.

19 THE COURT: Thank you.

16:49:24 20 Mr. Movius, any questions for Mr. Friend?

21 MR. MOVIUS: No, Your Honor.

22 THE COURT: Mr. Friend, were you aware that in
23 April of this year, 2012, FirstEnergy Family Credit Union
24 sued Federal, your credit union, because of the names being
16:49:39 25 so similar?

1 THE WITNESS: I was.

2 THE COURT: Do you know that a meeting was held in
3 my court's chambers about that lawsuit?

4 THE WITNESS: Yes.

16:49:50 5 THE COURT: And that I did certain things?

6 THE WITNESS: I knew that the meeting took place
7 and we were briefed.

8 THE COURT: Afterwards?

9 THE WITNESS: After the fact.

16:49:58 10 THE COURT: Did you learn that one of the things I
11 did was to refer this case, the lawsuit brought by Family
12 against Federal, to mediation?

13 I sent the parties downstairs to a magistrate
14 judge there. You're aware that a mediation took place?

16:50:12 15 THE WITNESS: Yes, ma'am.

16 THE COURT: And it happened in September 2012.
17 Are you aware of that time frame?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: And after that meeting with the
16:50:21 20 magistrate judge, there was a follow-up conference call with
21 the magistrate judge.

22 THE WITNESS: Yes.

23 THE COURT: You're aware of that?

24 THE WITNESS: I was.

16:50:27 25 THE COURT: Were you briefed after the initial

1 meeting, after the initial mediation?

2 THE WITNESS: Yes.

3 THE COURT: Were you briefed after the conference
4 call with the magistrate judge?

16:50:35 5 THE WITNESS: Yes.

6 THE COURT: What was your understanding as to why
7 the case didn't settle?

8 THE WITNESS: It was my understanding that
9 FirstEnergy Family Credit Union was not amenable to any of
16:50:48 10 the options that we had put out. The one that I thought was
11 most tenable was, in fact, a heightened communication
12 process with the members, or the field of membership, if you
13 will, that's coexistent between the two credit unions to
14 avoid the 20 or so cases of confusion that existed.

16:51:10 15 THE COURT: And because you were aware that the
16 lawsuit was originally filed in April of 2012, did
17 FirstEnergy Federal start taking any action back then to
18 change to a name that was less similar to Family's?

19 THE WITNESS: We started to consider it, but we
16:51:30 20 believed that we had exercised the right process to get to
21 the name change; and that, in fact, the confusion was fairly
22 limited, and by that time, we thought that it had pretty
23 much dissipated.

24 THE COURT: It's fair then, isn't it, for me to
16:51:49 25 think that the board members didn't receive notice when I

1 issued my preliminary injunction in early November, November
2 7, you knew way back in April that there was an issue?

3 THE WITNESS: Yes.

4 THE COURT: There was a mediation that was held,
16:52:03 5 but not successful, in September. So the threat of shutting
6 down the business, all that would have to be done, you were
7 aware of that as early as April, and probably even before
8 then; isn't that true?

9 THE WITNESS: We were, and we were resistant to
16:52:18 10 changing our name, simply because it was, A, a big impact on
11 the organization; B, potential confusion with our members,
12 beyond the confusion that had already potentially been
13 inflicted because of the similarity. And we believed that
14 the confusion had dissipated and that we had offered
16:52:38 15 reasonable solutions.

16 THE COURT: Thank you, sir.

17 I have no other questions for Mr. Friend. Is
18 there any reason he cannot step down? Mr. Skeriotis?

19 MR. SKERIOTIS: I do have just two questions, Your
16:52:49 20 Honor.

21 THE COURT: Please approach.

22 CROSS-EXAMINATION OF DAVID FRIEND

23 BY MR. SKERIOTIS:

24 **Q.** Mr. Friend, good afternoon.

16:52:57 25 **A.** Good afternoon.

1 **Q.** I believe you stated that there are two reasons why
2 defendant did not comply with the court's order, and that
3 was because of the issue of the appeal and a stay; is that
4 correct?

16:53:09 5 **A.** Correct.

6 **Q.** Okay. So the execution of the license agreement, would
7 it be fair to say, had no effect whatsoever in the defendant
8 not complying with the court's November 7th order?

9 **A.** None whatsoever.

16:53:22 10 MR. SKERIOTIS: Thank you.

11 No further questions, Your Honor.

12 THE COURT: Thank you.

13 Mr. Friend, you may step down.

14 THE WITNESS: Thank you.

16:53:28 15 THE COURT: You're welcome.

16 Ms. Dickson, Mr. Pritchard, any other witnesses?

17 MS. DICKSON: Your Honor, we were not intending to
18 call other members of the board, unless you wish to hear
19 from them. We do have another witness, though, after that.

16:53:39 20 THE COURT: I'd suggest you call that person that
21 you think would be most persuasive to the court.

22 MS. DICKSON: Understandable, Your Honor.

23 MR. PRITCHARD: Yes. Can I call Mr. Winston,
24 please?

16:53:50 25 THE COURT: Mr. Winston, please approach to be

1 sworn.

2 DAVID S. WINSTON, of lawful age, a witness called
3 by the Defendant, being first duly sworn, was examined and
4 testified as follows:

16:54:08 5 LAW CLERK: Please be seated.

6 THE COURT: Sir, am I correct in believing you
7 need no further coaching beyond that which you've heard me
8 give to other witnesses? And you're a licensed attorney,
9 aren't you?

16:54:26 10 THE WITNESS: I am.

11 THE COURT: So please take your seat and listen
12 for the question.

13 THE WITNESS: Thank you.

14 MR. PRITCHARD: Thank you, Your Honor.

16:54:33 15 CROSS-EXAMINATION OF DAVID S. WINSTON

16 BY MR. PRITCHARD:

17 Q. Mr. Winston, could you state your name and title for
18 the record?

19 A. Sure. David Winston, W-i-n-s-t-o-n. I am an attorney
16:54:42 20 in the FirstEnergy Legal Department. That would be an
21 in-house attorney.

22 Q. Thank you. And you became aware of the lawsuit filed
23 by Family against Federal quite early on in the process; is
24 that correct?

16:55:00 25 A. Well, actually, I became aware after, several months

1 after the lawsuit was filed. If you recall, I'm the second
2 lawyer in the department who was notified of the case.

3 **Q.** Thank you. And when you learned about the case, did
4 you take any steps with relation to the parties?

16:55:23 5 **A.** Sure, I did.

6 **Q.** And what were those?

7 **A.** I offered to mediate a resolution with the parties. I
8 offered our offices. I shuttled between the parties. We
9 met for a day sometime, I believe, in May of this year.

16:55:52 10 And we had a mediation, but we were not successful in
11 solving and resolving the dispute.

12 **Q.** Indeed. And you encouraged me during that mediation to
13 keep in touch and to provide you with statuses as to the
14 developments in the litigation; is that correct?

16:56:07 15 **A.** I did. I encouraged both sides to not only provide me
16 updates of the dispute, but to call me with questions or
17 with ideas of other ways that I could help the parties solve
18 the dispute in a way that was agreeable to both.

19 **Q.** And throughout the prosecution of the litigation, you
16:56:30 20 generally tried to remain neutralized between Family and
21 Federal; is that correct?

22 **A.** Well, I not only tried, but I did remain neutral
23 between the parties.

24 **Q.** And we had some discussions concerning our position
16:56:46 25 with respect to your ownership of marks that include

1 "FirstEnergy"; is that correct?

2 **A.** Well, they weren't so much discussions as, you know,
3 I -- the position regarding FirstEnergy's exclusive
4 ownership of the mark, FirstEnergy, was a position that
16:57:10 5 we've taken all along and early in the case.

6 And I think that's reflected in the actions that we
7 took. I mean, I had two goals all along following my
8 notification of this dispute, and that was, one, to find a
9 way for the parties to resolve it in a way that they could
16:57:32 10 both live with; and two, and I think primarily, to protect
11 the asset, that is, FirstEnergy.

12 FirstEnergy Corp has a lot of time and values the name
13 "FirstEnergy" very much, and it is a trademark, and we take
14 many steps to protect it.

16:57:53 15 **Q.** Indeed. Including filing a number of applications that
16 have matured into registrations for FirstEnergy for a
17 variety of services; is that correct?

18 **A.** Well, I'll apologize. I'm not a trademark attorney or
19 an intellectual property attorney. I have responsibility
16:58:10 20 for that, but I rely pretty heavily on my outside counsel.

21 But if your question is do we take -- do we have
22 multiple marks regarding FirstEnergy? That's correct. And
23 we take steps and we pay fees in order to protect and
24 preserve those marks.

16:58:32 25 **Q.** Uh-huh. And do you recall a conversation that we had

1 prior to the --

2 MR. PRITCHARD: And I apologize, it was November
3 6, is that correct, the preliminary injunction hearing, Your
4 Honor?

16:58:48 5 THE COURT: Yes, it was.

6 BY MR. PRITCHARD:

7 Q. -- prior to November 6 about whether somebody from
8 FirstEnergy would be interested or available in testifying
9 at that hearing?

16:59:05 10 A. Well, we had -- you know, we had telephone
11 conversations around that time. I don't have a specific
12 recollection about FirstEnergy providing a witness.

13 I know that later, in response to a subpoena, we talked
14 about providing a witness who could talk about the origins
16:59:25 15 of the credit union's use of the word "FirstEnergy" in their
16 name.

17 THE COURT: Mr. Pritchard, I want to say this to
18 you, because I'm not sure where you're going. You have had
19 a distinct impression that I believe is not supported by the
16:59:41 20 facts or law in this case, and I just will state for you now
21 that I have made a finding that Family has established an
22 ownership interest in and to FirstEnergy Family marks. I
23 know FirstEnergy has marks, a proprietary interest. Family
24 has marks. That's my ruling. That stands on the record.

17:00:09 25 What you should focus your testimony on, or that

1 you elicit from this witness, is that which might pertain
2 directly to my finding of contempt or not.

3 Don't waste your time if you seek to persuade me
4 by revisiting the issue of whether or not FirstEnergy has a
17:00:27 5 protected interest in FirstEnergy. It does. It's an asset.
6 He's correct. That has absolutely no bearing on the asset
7 that FirstEnergy Family Credit Union has and its marks,
8 including that full name that it uses and the variations of
9 that.

17:00:43 10 So I just don't want you to press Mr. Winston, and
11 I know that Mr. Skeriotis is on the -- and I just will
12 remind you, sir, that when an attorney objects in my room,
13 you stand, and that way I can stop the answer before it
14 comes.

17:00:59 15 I am willing to allow you to persuade me, but as a
16 judge I clerked for used to say, and I've taken it to heart,
17 it does no good to your client to annoy the mind you seek to
18 persuade.

19 So if you have a point to make regarding the
17:01:15 20 motion to show cause, please make it. But if you're going
21 to the proprietary interest that Family has in its marks, it
22 exists, and that's not to be revisited or changed in this
23 hearing.

24 MR. PRITCHARD: Yes, Your Honor. If I may have a
17:01:31 25 moment.

1 THE COURT: You may.

2 (Pause.)

3 BY MR. PRITCHARD:

4 Q. Did you ever convey to anyone from Family or any
17:02:23 5 representative of Family the position of FirstEnergy
6 Corporation with respect to the ownership of rights in
7 FirstEnergy?

8 A. Yes.

9 Q. Uh-huh. And how did that occur?

17:02:40 10 A. One occurrence happened at the mediation, and another
11 time I was approached by some board members of Family about
12 the dispute. We work in the same building, and they came to
13 me.

14 In the course of that discussion, I told them the
17:03:03 15 position that FirstEnergy Corp, the sponsor, has held all
16 along, and that is that it is -- FirstEnergy is our mark,
17 and it can only be used by a credit union with our
18 permission.

19 Q. Uh-huh. And the intention of you drafting that license
17:03:28 20 agreement, which began before the issuance of the
21 preliminary injunction in this case, was to, in fact,
22 clarify your position in that regard?

23 MR. SKERIOTIS: Objection.

24 THE COURT: Before you answer, basis,
17:03:41 25 Mr. Skeriotis?

1 MR. SKERIOTIS: It supposes something that hasn't
2 been established, Your Honor; namely, that Mr. Winston
3 drafted the agreement and his intention.

4 THE COURT: And, Mr. Pritchard, I am concerned
17:03:56 5 that while you might be circling, I am not convinced that
6 you are landing a plane anyplace close to what might be of
7 assistance to the court today.

8 MR. PRITCHARD: Uh-huh.

9 THE COURT: Do you have any other questions?
17:04:09 10 I sustain the objection.

11 Any other question for Mr. Winston?

12 MR. PRITCHARD: One more moment, Your Honor.
13 Thank you.

14 (Pause.)

17:04:28 15 BY MR. PRITCHARD:

16 Q. Mr. Winston, I have one last question.

17 Did you ever contemplate becoming involved in this
18 litigation?

19 MR. SKERIOTIS: Objection, Your Honor.

17:04:38 20 THE COURT: Sustained.

21 MR. SKERIOTIS: Work product.

22 THE COURT: It's just irrelevant to this hearing,
23 in addition to being work product and protected.

24 MR. PRITCHARD: Thank you, Your Honor. I'm
17:04:49 25 through with the witness then.

1 THE COURT: Thank you.

2 Mr. Movius, no questions for Mr. Winston, right?

3 MR. MOVIUS: Correct, Your Honor.

4 THE COURT: Mr. Skeriotis?

17:04:56 5 MR. SKERIOTIS: Yes, Your Honor.

6 THE COURT: I caution you, Mr. Skeriotis, not to
7 open a door.

8 DIRECT EXAMINATION OF DAVID S. WINSTON

9 BY MR. SKERIOTIS:

17:05:20 10 Q. Mr. Winston, you stated your two goals, I believe, were
11 to provide a resolution to the instant dispute at the
12 beginning of the outset of the case, as well as protect the
13 "FirstEnergy" mark. Is that correct?

14 A. Yes.

17:05:35 15 Q. Did that ever change during the course of this
16 litigation?

17 A. No.

18 Q. You utilized Ms. Barnes for outside counsel; is that
19 correct?

17:05:53 20 A. Correct.

21 Q. And I take it that you and her worked together on
22 issues related to this litigation; is that correct?

23 A. Yes, that is correct.

24 Q. Would it be fair to say that the actions taken by
17:06:05 25 Ms. Barnes were pursuant to direction by FirstEnergy?

1 **A.** Yes.

2 MR. SKERIOTIS: No further questions, Your Honor.

3 THE COURT: Thank you.

4 Mr. Pritchard, any follow-up from that line of

17:06:16 5 questioning?

6 MR. PRITCHARD: No, Your Honor.

7 THE COURT: Mr. Movius?

8 MR. MOVIUS: No, Your Honor.

9 THE COURT: Thank you.

17:06:23 10 Mr. Pritchard, Ms. Dickson, any other witness?

11 MS. DICKSON: May we have a moment, Your Honor?

12 THE COURT: You may.

13 Sir, thank you. You may step down. Thank you for

14 waiting.

17:06:40 15 THE WITNESS: Thank you.

16 MR. PRITCHARD: Thank you, Your Honor. I believe
17 that we're through with our presentation for this afternoon.

18 THE COURT: Thank you, Mr. Pritchard.

19 Mr. Movius, any additional witnesses?

17:07:23 20 MR. MOVIUS: I have no witnesses to call on behalf
21 of Family.

22 THE COURT: Mr. Pritchard and/or Ms. Dickson,

23 would you care to make brief remarks by way of summation? I

24 am giving you the opportunity. I am open to allowing you to

17:07:36 25 do it, but I'm not encouraging it. But I'd like you to have

1 the opportunity if you care to do so.

2 MR. PRITCHARD: Thank you. No, Your Honor.

3 THE COURT: Mr. Movius, I will extend the same
4 opportunity to you, with the same indication that while I'm
17:07:53 5 providing the opportunity, I'm not encouraging it.

6 MR. MOVIUS: No, Your Honor. Anything I would say
7 would be just consistent with our reply brief that we filed
8 earlier today.

9 THE COURT: Mr. Skeriotis, I suspect that your
17:08:06 10 answer would have been no in any case, but I'm extending the
11 same opportunity to you.

12 Is there anything that you would like to place on
13 the record by way of brief summation?

14 MR. SKERIOTIS: Your Honor, I would like to just
17:08:17 15 talk a little bit about the summary that I put together, if
16 that's at all possible, if it would be helpful to the court.

17 THE COURT: Regarding the license agreement?

18 MR. SKERIOTIS: Regarding the license agreement
19 and the timing of it and aspects of that nature for the
17:08:31 20 court.

21 THE COURT: If you can do it briefly, I'll allow
22 it.

23 MR. SKERIOTIS: Well, Your Honor, first of all,
24 we're in a precarious position because we're not parties to
17:08:48 25 this lawsuit yet. At the same time, I want to respect the

1 court's wishes in providing it with enough information to
2 have the court understand that absolutely, in no way, shape
3 or form were Brouse McDowell or FirstEnergy Corp in any way
4 whatsoever attempting to disrupt this litigation, and
17:09:09 5 moreover, attempting to interfere with the court's order.

6 There is nothing more important to Brouse
7 McDowell, as well as FirstEnergy Corp, than to ensure that
8 any court order is followed by any party in any litigation.

9 So pursuant to that, I just wanted to ensure that
17:09:28 10 the court was aware that as Mr. Winston testified, there
11 were two issues that we were trying to always accomplish
12 through this, and that is to protect the "FirstEnergy" mark,
13 and, in some way, shape or form, to help with mediation.

14 And, in fact, Mr. Winston, I'm not sure if the
17:09:49 15 court is aware of this or not, served as a mediator between
16 the two parties. And the court may have become aware of
17 that through today's hearing.

18 THE COURT: He testified to that today.

19 MR. SKERIOTIS: Yes.

17:09:57 20 THE COURT: And I had some understanding of that
21 even before today.

22 MR. SKERIOTIS: Okay. Nothing was ever done to
23 intentionally undermine any order of this court or this
24 litigation. Nothing was ever said to either party regarding
17:10:13 25 anything related to this litigation, including that any

1 license granted or to be granted was case dispositive or
2 anything remotely close to that.

3 The intentions were always to reduce the use of
4 the "FirstEnergy" mark by both plaintiff and defendant to
17:10:28 5 writing. The use by both parties existed pursuant to
6 FirstEnergy Corp's agreement to allow them to use that.

7 And, in fact, the license agreement, as we said
8 earlier, was drafted on November 5th, the initial drafts,
9 and prior to that, meetings had taken place to talk about
17:10:52 10 exactly what to do with respect to that.

11 The impetus for that was a letter of October 9th
12 from the plaintiff to the defendant. And in that letter of
13 October 9th, it stated, among other things, or implied,
14 among other things, that the plaintiff did not need a
17:11:08 15 license or any other approval from FirstEnergy Corp to use
16 the mark "FirstEnergy."

17 So pursuant to that, steps were taken, and that
18 was the impetus at that point to start to figure out exactly
19 what needed to be done, if anything, by FirstEnergy Corp so
17:11:25 20 that -- to show that its intention was that you actually did
21 need to use the mark "FirstEnergy" through approval of
22 FirstEnergy Corp.

23 So that happened pursuant to that October 9th
24 letter.

17:11:40 25 The draft of the license agreements, as I said,

1 was in place prior to the hearing on the preliminary
2 injunction. And the other impetus for actually sending out
3 the license agreements was Mr. Winston's subpoena for
4 deposition on November 16th.

17:11:56 5 THE COURT: Just one moment, please,
6 Mr. Skeriotis.

7 (Pause.)

8 THE COURT: Thank you, sir. You're nearly done,
9 aren't you?

17:12:12 10 MR. SKERIOTIS: Yes, I am, Your Honor.

11 THE COURT: Let me ask this question.

12 MR. SKERIOTIS: Sure.

13 THE COURT: I don't know if it's in your prepared
14 remarks. It's my understanding that Federal has entered the
17:12:20 15 license agreement with FirstEnergy -- with your client;
16 Family has not.

17 MR. SKERIOTIS: That is correct, Your Honor, at
18 this point, correct.

19 THE COURT: Thank you. Anything else to add?

17:12:30 20 MR. SKERIOTIS: Only that the license agreements
21 were sent to both parties asking for a date by which to have
22 them executed or otherwise respond to by December 15th. So,
23 you know, partly for that issue of December 15th is to show
24 the court that we had no intentions of interfering with any
17:12:47 25 license -- I'm sorry, any order or anything along those

1 lines.

2 THE COURT: You'd agree that your timing was
3 unfortunate?

4 MR. SKERIOTIS: And that's why we're here to
17:12:54 5 explain that, Your Honor. We absolutely recognize that.

6 But, you know, to tell the court again that the
7 drafting began October 29th, well before any injunction
8 order ever issued, was to inform the court that none of that
9 was taken pursuant to any court order or anything with
17:13:11 10 respect to that knowledge. And it was only done pursuant to
11 trying to help resolve the case, from at least the
12 standpoint of the mark "FirstEnergy" and any rights
13 associated with that. But in --

14 THE COURT: I understand that, and I appreciate
17:13:25 15 it. And Ms. Barnes has said this, and I want to make sure
16 that you're in league with her statement, that it was a
17 mistake to issue that order -- pardon me, to issue that
18 agreement with my order pending?

19 MR. SKERIOTIS: You know, and I'm glad you pointed
17:13:41 20 that out, Your Honor. From the standpoint that it did
21 anything to your order, we don't agree it changed a thing,
22 obviously.

23 THE COURT: It didn't change anything
24 substantively.

17:13:51 25 MR. SKERIOTIS: Correct.

1 THE COURT: Perhaps, however, based upon the
2 testimony that I've heard from Ms. Momeyer, it fueled an
3 already wrong thinking that she had, believing that there
4 were opportunities to do something other than that described
5 in the four corners of my preliminary injunction.

6 And in any case, it was decidedly mistaken
7 judgment, poor timing, to issue any document that touched
8 upon the matters pending before me that were under
9 preliminary injunction.

10 I expect you to agree with that, or I'm going to
11 be equally concerned about Brouse McDowell's behavior in
12 this as that I am of the Webb firm.

13 MR. SKERIOTIS: It was poor timing, yes, Your
14 Honor.

15 THE COURT: Unless there is something more, I
16 think I've heard all that I need to hear and I'm prepared to
17 make my ruling.

18 Is there anything more?

19 MR. SKERIOTIS: No, Your Honor. Thank you.

20 THE COURT: I appreciate you being here today, and
21 it was wise of you to appear on behalf of Mr. Winston and
22 Ms. Barnes, so I appreciate that.

23 MR. SKERIOTIS: Your Honor, it's a pleasure for
24 me. We haven't had the opportunity for me to be in front of
25 you, so it was my pleasure being here today, and I thank you

1 very much.

2 THE COURT: This matter, as I began to spread on
3 the record in my questions placed to Director Friend, is not
4 a recently filed matter. It's been on the court's docket
5 since April of this year.

6 And as we know through Mr. Winston's testimony,
7 although he didn't recall the specific dates, this matter
8 was on the radar of Federal, Family, FirstEnergy
9 Corporation. There were attempts to mediate before the
10 matter was ever filed in federal court. There were attempts
11 to mediate while it was filed in federal court. I engaged
12 counsel and the parties in discussion in my chambers during
13 the case management conference.

14 I cannot begin to think of a legitimate or
15 reasonable reason for the posture that this case is in today
16 relative to the motion to show cause for me to determine
17 whether or not defendant is in contempt of my preliminary
18 injunction order docketed at ECF 39 issued on November 7th,
19 2012.

20 Despite the entry and service of that order,
21 Defendant FirstEnergy Federal Credit Union continues using
22 "FirstEnergy Federal Credit Union," "FirstEnergy Federal,"
23 "FirstEnergy FCU," "FEFCU" and the FirstEnergyFCU.com domain
24 name in contravention of the express prohibitions of that
25 order.

1 The court's preliminary injunction order has been
2 resisted and disobeyed by Defendant FirstEnergy Federal
3 Credit Union; the President and CEO of defendant's Board of
4 Directors, Diane Momeyer; the Board of Directors, and I find
17:16:49 5 to a lesser extent based upon what I've heard, although
6 Mr. Friend's testimony encourages me that the Board of
7 Directors were fully informed and still persistent in
8 contravention of my order; and most disconcertingly, by lead
9 attorney for Defendant FirstEnergy Federal Credit Union,
17:17:09 10 Mr. Matthew Pritchard and his assistant counsel, and I
11 apologize, Ms. Dickson, because you've shown yourself to be
12 so much more than an assistant today, but I just mean to
13 distinguish you from lead counsel, Cecelia Dickson.

14 The act of disobedience or resistance has been
17:17:32 15 malicious, willful and deliberate, as distinguished from
16 accidental, inadvertent or negligent violation. And I take
17 as one evidence of that the signature of Ms. Momeyer on the
18 license agreement, which was extended after my November 7,
19 2012 order was in place.

17:17:49 20 The deliberate or intended violation of my
21 preliminary injunction order has been shown by clear and
22 convincing evidence.

23 In view of defendant's contempt and its continuing
24 infringement and my expectation that it intends to continue
17:18:05 25 infringing based upon the testimony I've heard here today, I

1 find that this is an exceptional case under 15, U.S.C.,
2 Section 1117, subpart (a), such that plaintiff will be
3 entitled to recover its attorneys' fees in the event
4 defendant ultimately is found liable after a trial on the
17:18:25 5 merits.

6 That concludes my findings of fact at this time.
7 When I docket this, I intend to amplify those findings of
8 fact as necessary.

9 Conclusions of law.

17:18:38 10 A federal court has the power to impose civil or
11 criminal sanctions on a party and/or an attorney who fails
12 to comply with a lawful, specific court order. Pursuant to
13 18, U.S.C., Section 401, subpart (3), a court may punish
14 contempt of its authority, including resistance to its
17:18:57 15 orders.

16 Section 401, subpart (3) of Title 18 provides:

17 "A court of the United States shall have power to
18 punish by fine or imprisonment, or both, at its discretion,
19 such contempt of its authority, and none other, as, subpart
17:19:15 20 (3), disobedience or resistance to its lawful writ, process,
21 order, rule, decree or command."

22 Violation of a definite and specific court order
23 must be shown by clear and convincing evidence before
24 sanctions can be imposed for violation of that order.

17:19:33 25 By virtue of the conduct that I've described,

1 which has been substantiated by the testimony taken in court
2 here this afternoon, Defendant FirstEnergy Federal Credit
3 Union; the President and CEO of Defendant, Diane -- of
4 Defendant Federal's Board of Directors, Diane Momeyer;
17:19:53 5 members of the Board of Directors; the attorneys,
6 Mr. Pritchard and Ms. Dickson, are hereby adjudged guilty of
7 civil contempt of court, in violation of 18, U.S.C., Section
8 401(3) for failing to comply with the preliminary injunction
9 order docketed as ECF number 39 and entered on November 7,
17:20:13 10 2012.

11 The court hereby imposes a fine of \$1,000 per day
12 that Defendant FirstEnergy Federal Credit Union remains
13 noncompliant with the preliminary injunction upon
14 FirstEnergy Federal Credit Union, Ms. Momeyer, members of
17:20:35 15 the Board of Directors and Attorneys Pritchard and Dickson.

16 The conduct of Defendant FirstEnergy Federal
17 Credit Union, Ms. Momeyer, members of the Board of Directors
18 and the attorneys makes this case an exceptional one within
19 the meaning of Section 1117(a) of Title 15 of the United
17:20:55 20 States Code.

21 Plaintiff is entitled to its reasonable attorneys'
22 fees and expenses. Plaintiff shall, therefore, recover its
23 attorneys' fees and reasonable expenses.

24 The court will determine the amount of any such
17:21:09 25 award after plaintiffs have submitted to counsel for its

1 review a full -- defense counsel, that is, full and complete
2 record of the expenses and billable time charged by the
3 separate attorneys and law clerks for the work performed in
4 the case at bar, and that incurred in pursuit of the motion
17:21:32 5 to show cause.

6 At the close of this case, plaintiff shall serve
7 and file a supplemental memorandum in support of its
8 application for an award of attorneys' fees and expenses
9 against defendant.

17:21:46 10 The safe distance rule that was articulated by the
11 Sixth Circuit and requested by plaintiff in its moving
12 papers for preliminary injunction is declined. At this
13 time, the court declines to invoke the safe distance rule
14 and order that FirstEnergy Federal may not use that compound
17:22:08 15 word to comply with the preliminary injunction.

16 Mr. Pritchard, Ms. Dickson, I will allow you to
17 file on my docket, no later than tomorrow, a motion asking
18 me to stay the terms of this preliminary -- this finding of
19 contempt.

17:22:27 20 I caution you not to give me a blanket motion
21 without detailing what it is you intend to do to bring your
22 client into compliance and the time frame within which you
23 intend to take such action.

24 Can I make myself any more clear?

17:22:46 25 MS. DICKSON: No, Your Honor.

1 MR. PRITCHARD: Absolutely not, Your Honor.

2 THE COURT: Plaintiff's counsel?

3 MR. MOVIUS: No, Your Honor.

4 THE COURT: Ms. Barnes, you're on notice that if
17:22:56 5 there's any other further action on your part or on the part
6 of FirstEnergy Corporation to impede or to assist in what I
7 consider to impede the enforcement of my order or to assist
8 in the violation of my order, I will take serious and
9 necessary action.

17:23:13 10 Can I make myself any more clear on that?

11 MS. BARNES: No, Your Honor. I understand.

12 THE COURT: Unless there is something more, I
13 intend to adjourn this hearing.

14 Defense counsel?

17:23:24 15 MR. PRITCHARD: No.

16 MS. DICKSON: No, Your Honor.

17 THE COURT: Plaintiff's counsel?

18 MR. MOVIUS: No. Thank you, Your Honor.

19 THE COURT: Counsel for FEC?

17:23:30 20 MR. SKERIOTIS: No, Your Honor.

21 THE COURT: Board of Directors, you're all free to
22 leave at this time. This matter is adjourned.

23 LAW CLERK: All rise.

24 (Proceedings concluded at 5:23 o'clock p.m.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

<u>S/Mary L. Uphold</u>	<u>December 5, 2012</u>
Mary L. Uphold, RDR, CRR	Date

I N D E X

DIRECT EXAMINATION OF DIANE LYNN MOMEYER BY MS. DICKSON	18
CROSS-EXAMINATION OF DIANE LYNN MOMEYER BY MR. MOVIUS	44
CROSS-EXAMINATION OF DIANE LYNN MOMEYER BY MR. SKERIOTIS	61
DIRECT EXAMINATION OF DAVID FRIEND BY MS. DICKSON	67
CROSS-EXAMINATION OF DAVID FRIEND BY MR. SKERIOTIS	75
CROSS-EXAMINATION OF DAVID S. WINSTON BY MR. PRITCHARD	77
DIRECT EXAMINATION OF DAVID S. WINSTON BY MR. SKERIOTIS	84